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SYED SADDIQ SYED ABDUL RAHMAN v. PP

COURT OF APPEAL, PUTRAJAYA
AHMAD ZAIDI IBRAHIM JCA
AZMAN ABDULLAH JCA
NOORIN BADARUDDIN JCA

B

[CRIMINAL APPEAL NO: W-05(SH)-555-11-2023, W-05(SH)-556-11-2023 & W-05(SH)-557-11-2023]
25 JUNE 2025

C

Abstract – *(i) For an act to constitute criminal breach of trust, it must involve dishonesty, such as misappropriation, conversion to one's own use, or use/disposal in violation of a direction of law or legal contract. The actus reus of 'withdrawal' of money, in itself, does not fall under any of the five limbs constituting criminal breach of trust as defined in s. 405 of the Penal Code ('PC'). There must be evidence of dishonesty on the part of the principal offender, indicating an intention to cause wrongful loss or wrongful gain; (ii) A fundamental ingredient of the offence under s. 403 of the PC is the requirement that the property dishonestly misappropriated or converted must belong to 'another person'. If the money is found to belong to the accused, this essential element is not proven; (iii) Charges under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA') are predicated on an underlying unlawful activity or scheduled offence. If the predicate offence is not proven, the AMLA charges cannot be sustained.*

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CRIMINAL LAW: *Offence – Criminal breach of trust – Penal Code, ss. 405 & 406 – Misappropriation of political funds for personal use – Accused instructed fund trustees to withdraw RM1 million from political party's account – Five limbs of actus reus of criminal breach of trust under s. 405 – Whether ingredients and requirements of s. 405 met – Whether accused's act amounted to offence under s. 405 – Whether physical act or actus reus of 'withdrawal' of money constituted offence of criminal breach of trust – Whether there was abetment*

G

CRIMINAL LAW: *Offence – Dishonestly misappropriating property for oneself – Fund trustee directed by accused to transfer RM120,000 from political party's account into accused's account – Money proceeds from two charity dinners – Whether money belonged to accused or another – Whether credible evidence adduced to support charge – Penal Code, s. 403*

H

CRIMINAL LAW: *Offence – Engaging in money laundering activities – Proceeds from unlawful activity – Transferred into accused's account – Whether prosecution successfully proved prima facie case – Whether charge proven – Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, s. 4(1)(b)*

I

The appellant, the Head of Parti Pribumi Bersatu Malaysia ('Bersatu'), Youth Wing, Angkatan Bersatu Anak Muda ('Armada'), was charged at the High Court with two charges under the Penal Code ('PC') and two charges under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA'). The prosecution's case revealed that: (i) in March 2020, a meeting was held at the appellant's house and this meeting was attended by the appellant, the Assistant Treasurer of Armada ('PW13'), the Assistant Secretary of Armada ('PW11') and two other persons. In this meeting, the appellant was alleged to have instructed PW11 and PW13 to withdraw monies from Armada's bank account and, upon this alleged instruction, PW13 and P11 withdrew RM1 million from the said account. This formed the basis for the charge under s. 406 of the PC ('abetment charge'); (ii) in 2018, two separate fundraisers were held to raise funds for the appellant's political campaign and RM120,000 was raised. These funds were then deposited into the bank account of Armada Bumi Bersatu Enterprise ('ABBE'), a company owned by PW13. Pursuant to the appellant's alleged instruction, PW13 transferred the impugned RM120,000 in four separate tranches of RM30,000 each into the appellant's personal Maybank account ('appellant's Maybank account'). This formed the basis for the charge under s. 403 of the PC ('s. 403 charge'); (iii) in June 2018, the appellant transferred RM100,000 in two separate tranches of RM50,000 each into his personal Maybank ASB account ('ASB account'). This formed the basis for the charges under s. 4(1)(b) of the AMLA ('AMLA charges'). In his defence, the appellant contended that in regards to: (i) the abetment charge, he did not instruct PW11 and PW13 to withdraw the RM1 million from Armada's bank account. During the meeting at his residence, it had been collectively decided by the then top leadership of Armada that monies needed to be withdrawn for the purposes of rendering COVID-19 pandemic assistance and welfare for the month of Ramadhan and Hari Raya. Consequently, PW13 was instructed to discuss with Armada's EXCO for the exact amount required for the above purposes; (ii) the s. 403 charge, he did not dishonestly misappropriate or convert the RM120,000, as the impugned money belonged to him. Throughout the election campaign, he had spent about RM171,675 and the funds raised were reimbursements of monies he had spent. According to the appellant, he had merely borrowed ABBE's bank account for the purpose of collecting contributions raised from the two fundraising programs; and (iii) the AMLA charges, he had no reason to believe or suspect that the sum of RM100,000 transferred to his ASB account were proceeds of unlawful activity or the instrumentalities of a scheduled offence as the said monies belonged to him and, as such, *mens rea*, which was the essential element of the offence under the AMLA charges, was absent. At the conclusion of the trial, the High Court found the appellant guilty of the charges and convicted him as per the charge. Hence, the present appeal.

A **Held (allowing appeals)**
Per Noorin Badaruddin JCA delivering the judgment of the court:

(1a) The trial judge erred in referring to article 24.7 of the Bersatu Constitution and equating 'withdrawal' with 'expenses' from the same provision. To read the word 'perbelanjaan' as necessarily
B encompassing 'pengeluaran' was not a conclusion that must follow from article 24.8 of the Bersatu Constitution. As such, the withdrawal of the RM1 million from Armada's account by PW13 could not be said to have been used or disposed of in violation of a direction of law. (para 45)

C **(1b)** There are five limbs of *actus reus* or physical element that constitute the offence of criminal breach of trust under s. 405 of the PC. The physical act or *actus reus* of 'withdrawal' of money, however, does not fall under any of the five limbs of the *actus reus* of criminal breach of trust defined under s. 405 of the PC. Therefore, when PW13, being one of the three
D signatories or trustees of Armada's accounts and he was not prohibited from holding Armada's funds, withdrew the RM1 million from Armada's account, he could not be said to have committed criminal breach of trust and it necessarily followed that the appellant could not be said to have abetted the commission of an offence. (paras 48 & 49)

E **(1c)** There was no evidence disclosing that PW13 had withdrawn the impugned RM1 million dishonestly. When asked as to why he had 'clear' the money to PW8 and PW9, PW13 said 'Saya hanya mengikut arahan YB Syed Saddiq' and that without the appellant's instruction, he would not have 'clear' the money to PW8 and PW9. PW8 and
F PW9, on the other hand, testified and affirmed that all the monies that were spent from the RM1 million withdrawal were spent on Armada and for Armada's programs or activities. Where evidence showed that the money was distributed for Armada's programs, PW13 could not be said to have been actuated with dishonesty in distributing the RM1
G million. Therefore, the principal offence under s. 405 of the PC was groundless. (para 54)

(1d) There could never be the element of dishonesty on the part of the appellant in the context relating to the word 'clearkan', which represented a valid concern regarding the safety of the monies in
H PW13's hand. The evidence of the manner in which the funds were distributed, *ie*, for COVID-19 assistance, Raya, Ramadan and welfare, debunked the allegations of dishonesty on the part of the appellant. There was never the intention of the appellant to cause wrongful loss to Armada or wrongful gain to him as not a single cent was received
I by him. The abetment charge must consequently fall. (para 68)

(2a) The trial judge had made a finding of fact that the RM120,000, which was the proceeds from the fundraising, was for the use of the appellant to finance his election expenses. When the trial judge had found so, for all intents and purposes, the money belonged to the appellant. Even PW13 did not say that the RM120,000 belonged to ABBE. Instead, he testified that the account belonged to ABBE and the RM120,000 was deposited therein. In fact, there was not an iota of evidence that surfaced showing that the money belonged to ABBE or Armada. There was also no attempt by the prosecution to lead evidence that it was ABBE's monies *albeit* ABBE's account was used to receive the donation. Premised on the trial judge's finding that the money was for the purpose of the appellant's political campaign, PW13 had held the RM120,000 in trust for the appellant and not for the donors. (paras 88, 90 & 91)

(2b) The amount of RM90,000 from the impugned RM120,000 was transferred before the beginning of the campaign period whereas the remaining RM30,000 was transferred during the campaign period. Instead of depositing the RM170,000 the appellant had on hand, he proceeded to spend RM170,000 on his election campaign, always intending that it be considered monies from the fundraisers. In these circumstances, the impugned sum in the appellant's Maybank account was substituted with the RM170,000 cash he hand on hand, the latter of which was fully spent by the end of the campaign period for the appellant's campaign. By 16 and 19 June 2018, therefore, the RM100,000 transferred into his ASB account had already become his personal monies. (para 105)

(2c) The prosecution failed to adduce credible evidence and facts to support the s. 403 charge. The most important ingredient of the offence under s. 403 of the PC, *ie*, the RM120,000 belonged to another person instead of the appellant, was not proved. Further, the evidence adduced by the prosecution was unsafe to be relied upon and insufficient to prove the necessary ingredients of the offence. (para 113)

(3) Given that the predicate offence under s. 403 of the PC was not proven, the AMLA charges could not be sustained. (para 114)

(4) In disbelieving the appellant, for being unaware of the amount withdrawn, reflected that the trial judge failed to appreciate and consider the core features of the appellant's defence. The appellant's defence could not be said to be mere denial. The evidence adduced by the prosecution was challenged and explained in every aspect by the appellant. When the defence raised by an accused is not bare denial, it is incumbent on the trial judge to consider and scrutinise the defence's version and even if the defence's version could not be

believed, the trial judge must give reasons as to why the version did not cast reasonable doubt on the prosecution's case. The trial judge was bound to, but did not, view the whole of the evidence objectively and from all angles, with the result that the appellant had lost the chance which was fairly open to him of being acquitted. The non-direction of the trial judge amounted to a misdirection. (paras 123, 127 & 129)

(5) The convictions entered by the High Court on all the charges preferred against the appellant were unsafe. The convictions and sentences were set aside. The appellant was acquitted and discharged of the charges. (paras 160 & 161)

Case(s) referred to:
Hairie Mahthinem v. PP [2011] 8 CLJ 625 CA ***(refd)***
Hj Abdul Ghani Ishak & Anor v. PP [1981] CLJU 96; [1981] 1 LNS 96 FC ***(refd)***
Lim Poh Soon v. PP [2013] 6 MLJ 252 ***(refd)***
Maria Elvira Pinto Exposto v. PP [2020] 5 CLJ 1 FC ***(refd)***
Mohd Johi Said & Anor v. PP [2005] 1 CLJ 389 CA ***(refd)***
Olier Shekh Awoyal Shekh v. PP [2017] 2 CLJ 141 FC ***(refd)***
PP v. Datuk Tan Cheng Swee [1979] CLJU 74; [1979] 1 LNS 74 HC ***(refd)***
PP v. Lo Ah Eng [1965] 31 MLJ 241 ***(refd)***
PP v. Ramesh Rajaratnam [2025] 1 CLJ 55 CA ***(refd)***
PP v. Wong Yee Sen & Ors [1990] 1 CLJ 325; [1990] 2 CLJ (Rep) 902 HC ***(refd)***
Prasit Punyang v. PP [2014] 7 CLJ 392 CA ***(refd)***
Tan Sri Tan Hian Tsin v. PP [1978] CLJU 199; [1978] 1 LNS 199 FC ***(refd)***
Taylor v. Gosset, Tex Civ App, 269 SW 230 ***(refd)***
Thiangiah & Anor v. PP [1976] CLJU 166; [1976] 1 LNS 166 HC ***(refd)***

Legislation referred to:
Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, s. 403
Criminal Procedure Code, ss. 152, 153, 154, 182A(1)
Evidence Act 1950, ss. 5, 6, 7, 8, 9
Penal Code, ss. 107, 108, 109, 405, 406

Other source(s) referred to:
Law of Crimes by Ratanlal & Dhirajlal, 26th edn, p 2264
Ratanlal and Dhirajlal's Law of Crimes, vol 2, p 2264
Ratanlal and Dhirajlal's Law of Crimes, 28th edn, vol 3, p 2923

For the appellant - Mohd Yusof Zainal Abiden, Hisyam Teh Poh Teik, Alex Tan Chie Sian, Devandran S Subramaniam, Kee Wei Loon, Low Wei Loke, Khairuzzaman Ridha & Hing Seng Shen; M/s Wong Kian Kheong
For the respondent - Wan Shaharuddin Wan Ladin, Farah Ezlin Yusop Khan, Nurul Qistini Qamarul Abrar, Muhammad Asraf Mohamed Tahir & Wan Nur Iman Wan Ahmad Afzal; DPPs

[Editor's note: For the High Court judgment, please see PP lwn. Syed Saddiq Syed Abdul Rahman [2025] 3 CLJ 936 (overruled).]

Reported by Lina E

JUDGMENT

Noorin Badaruddin JCA:

[1] The appellant, Syed Saddiq bin Syed Abdul Rahman, was charged with two charges under the Penal Code ("PC") and two charges under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) ("AMLA").

[2] The four charges were framed as follows:

Case WA-45-21-11-2021:

> Bahawa kamu, pada 6 Mac 2020, di Menara CIMB Bank Berhad, yang beralamat di Menara CIMB KL Sentral, Tingkat Bawah, Menara CIMB, Jalan Stesen Sentral 2, Kuala Lumpur Sentral dalam Wilayah Persekutuan Kuala Lumpur telah bersubahat dengan Rafiq Hakim bin Razali yang merupakan Penolong Bendahari Angkatan Bersatu Anak Muda, Parti Pribumi Bersatu Malaysia (ARMADA Malaysia) dan di dalam kapasiti tersebut, Rafiq Hakim bin Razali telah diamanahkan dengan penguasaan ke atas dana ARMADA Malaysia berjumlah RM1,000,000.00 telah melakukan pecah amanah jenayah dengan secara tidak jujur menyalahgunakan dana tersebut iaitu satu kesalahan di bawah seksyen 406 Kanun Keseksaan, dan kamu telah bersubahat melakukan kesalahan tersebut di mana kesalahan tersebut telah dilakukan hasil persubahatan kamu dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 406 Kanun Keseksaan [Akta 574] dibaca bersama seksyen 109 Kanun yang sama.
>
> ("abetment charge")

Case WA-45-22-11-2021:

> Bahawa kamu, di antara 8 April 2018 sehingga 21 April 2018 di Malayan Banking Berhad yang beralamat di No. 16 & 16A, Jalan Pandan 3/6A, Taman Pandan Jaya dalam Wilayah Persekutuan Kuala Lumpur telah dengan secara tidak jujur menyalahgunakan harta untuk diri sendiri, iaitu wang berjumlah RM120,000.00 daripada akaun Maybank Islamic Berhad milik ARMADA Bumi Bersatu Enterprise bernombor 562254511198 dengan menyebabkan Rafiq Hakim bin Razali melupuskan wang tersebut dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 403 Kanun Keseksaan [Akta 574].
>
> ("s. 403 charge")

Case WA-45-23-11-2021:

> Bahawa kamu, pada 16 Jun 2018, di Maybank Islamic Berhad yang beralamat di No. 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu

memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun Amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah Seksyen 4(1) Akta Yang sama.

("AMLA charge No.1")

Bahawa kamu, pada 19 Jun 2018, di Maybank Islamic Berhad yang beralamat di No. 17 & 29, Jalan Persisiran Perling, Taman Perling, dalam Daerah Johor Bahru, dalam Negeri Johor Darul Takzim, telah melibatkan diri dalam aktiviti pengubahan wang haram iaitu memindahkan wang berjumlah RM50,000.00 di dalam akaun Maybank Islamic Berhad milik kamu bernombor 151342007253 ke dalam akaun amanah Saham Bumiputera milik kamu bernombor 238246993, yang merupakan hasil daripada aktiviti haram. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah Seksyen 4(1)(b) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 [Akta 613] yang boleh dihukum di bawah Seksyen 4(1) Akta Yang sama.

("AMLA charge No. 2")

[3] At the close of the prosecution case, the learned High Court/trial judge ('the LTJ') ruled that the prosecution had established a *prima facie* case against the appellant and the appellant was called upon to enter his defence on all four charges preferred against him.

[4] On 9 November 2023, the LTJ concluded that the appellant failed to raise a reasonable doubt on the prosecution's case and that the prosecution had proven the charges beyond reasonable doubt. The appellant was found guilty of the charges and was accordingly convicted and sentenced. It is against the entire decision of the LTJ that the present appeals are directed.

Narrative Of The Prosecution's Case At The Trial

[5] A total of 29 witnesses were called by the prosecution in support of its case.

The Abetment Charge

[6] The appellant was the Head of Parti Pribumi Bersatu Malaysia ("Bersatu") Youth Wing, Angkatan Bersatu Anak Muda ("Armada") at the material time.

[7] Between February and early March 2020, a development in the political arena of Malaysia commonly referred to as the Sheraton Move, saw the fall of the ruling Pakatan Harapan (PH) coalition government and the resignation of Prime Minister Tun Dr Mahathir Mohamad. Thereafter, Tan Sri Muhyiddin Yassin was then sworn in as the Prime Minister of Malaysia.

[8] In early March 2020, a meeting was held at the appellant's house. The appellant, Rafiq Hakim Razali (PW13) who was the Assistant Treasurer of Armada, Ahmad Redzuan Mohamed Shafi (PW11), the Assistant Secretary of Armada at the material time and two other persons by the name of Ulya and Aizad were in attendance at the meeting.

[9] It was at this meeting, that the appellant was alleged to have instructed PW11 and PW13 to withdraw monies from Armada's official CIMB Account No. 80-0848352-5 ("Armada's account"). Pursuant to this alleged instruction, PW13 and PW11 proceeded to withdraw RM1 million from Armada's account on 6 March 2020.

[10] It is the prosecution's case that as the Head of Armada, the appellant was subjected to the Constitution of Armada (P53) where article ("art.") 18 of P53 states that:

> Peraturan Wang dan Harta parti yang ternyata dalam Fasal 24 Perlembagaan hendaklah dipakai sebagai Peraturan Kewangan Armada Malaysia.

[11] Based on art. 2 of P53, any reference to "Perlembagaan" refers to Bersatu's Constitution.

[12] It is the prosecution's case that PW13 had contravened art. 24.8 of Bersatu's Constitution by withdrawing RM1 million on 6 March 2020 allegedly pursuant to the appellant's instructions without obtaining Bersatu Supreme Council's prior approval. Article 24.8 of Bersatu's Constitution reads:

> Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi.

The Section 403 Charge

[13] In 2018, two separate fundraisers were held in Muar and Ampang to raise funds for the appellant's political campaign and RM120,000 was raised from the events. These funds were deposited into the Maybank Islamic Berhad account number 562254511198 under the name of Armada Bumi Bersatu Enterprise ("ABBE/ABBE's account"), a company which was owned by PW13 at the material time.

[14] On 8, 11, 12 and 21 April 2018, pursuant to the appellant's instructions, PW13 transferred the impugned RM120,000 in four separate tranches of RM30,000 each into the appellant's personal Maybank Account No. 151342007253 ("appellant's Maybank account").

The AMLA Charges

[15] On 16 and 19 June 2018, the appellant transferred RM100,000 in two separate tranches of RM50,000 each into his personal Maybank ASB Account No. 3585649 ("ASB account"). These two transactions are the subject matter of the money laundering offences, the predicate of which is the offence under s. 403 of the PC.

The Appellant's Defence

[16] In regard to the abetment charge, it was the appellant's defence that he did not instruct or command PW11 and/or PW13 to withdraw the RM1 million from the Armada's bank account. According to the appellant, during the impugned meeting at his residence, it had been collectively decided by the then top leadership of Armada, known as G5 that monies needed to be withdrawn for the purposes of rendering COVID-19 pandemic assistance and welfare for the month of Ramadhan and Hari Raya.

[17] Consequently, PW13 was instructed to discuss with Armada's Exco for the exact amount required for the above purposes.

[18] In essence, the appellant denied that he had abetted PW13.

[19] In regard to the s. 403 charge, it was the appellant's defence that he did not dishonestly misappropriate or convert the RM120,000 as the impugned money belonged to him and the money was raised for his political campaign. It was further contended that the impugned money was not the property of Armada or Bersatu or ABBE or PW13.

[20] It was the appellant's defence further that the two fundraising dinners had always been treated by him as reimbursement or a substitution of the monies he spent on his own personal political campaign. It was the appellant's contention that he had spent about RM171,675 throughout the election campaign as evidenced by exh. D91.

[21] According to the appellant he had merely borrowed the ABBE's bank account for the purpose of collecting contributions raised from the two fundraising programs.

[22] In cross-examination, PW13 also confirmed that he had suggested to DW2 that the appellant could use the ABBE's account for his fundraising programs and that the fundraising programs were meant for the appellant's political campaign during the 14th General Election.

[23] DW2 and DW3 who were called by the appellant supported his defence which essentially were as follows:

(i) that the fundraising events were meant for the appellant and the same did not involve any members of Bersatu or Armada;

(ii) that the ABBE's account was used for the fundraising events at the suggestion of PW13;

(iii) that the appellant had given DW4 cash amounting to about RM30,000 to organise the Muar's fundraising dinner;

(iv) neither Armada nor Bersatu rendered any assistance for the Muar's fundraising dinner and the proceeds were solely for the benefit of the appellant; and

(v) during the campaign period for the 14th General Election, the appellant had also given DW4 cash to pay for all the expenses incurred for his personal political campaign.

[24] In relation to the AMLA charges, it was the appellant's defence that he had no reason to believe or suspect that the sum of RM100,000 transferred to his ASB account was proceeds of unlawful activity or the instrumentalities of a scheduled offence as the said monies belonged to him and as such *mens rea* which is the essential element of the offence under the AMLA charges is absent on his part.

The LTJ's Findings

[25] The LTJ's findings are reproduced herein.

> ALASAN
>
> Pertuduhan Pertama
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> [6] Pecah amanah jenayah telah diberikan takrifan di bawah seksyen 405 Kanun Keseksaan manakala menyubahati sesuatu perkara dan pensubahat pula ditakrifkan di bawah seksyen 107 dan 108 Kanun yang sama.
>
> [7] Bagi pertuduhan pertama ini, pihak pendakwaan bergantung kepada keterangan PW11 & PW13 yang merupakan pemegang amanah kepada akaun rasmi ARMADA, selain dari OKT sendiri. Wang sejumlah RM1,000,000.00 yang menjadi salah satu perkara pokok dalam kes ini telah dikeluarkan melalui sekeping cek yang ditandatangani oleh PW11 & PW13. Tindakan ini, menurut kedua-dua saksi ini adalah hasil dari arahan yang diberikan oleh OKT kepada mereka melalui perjumpaan mereka pada awal bulan Mac 2020, dirumah OKT sendiri.
>
> [8] Menurut mereka berdua, perbincangan tersebut yang turut dihadiri oleh DW3 & Aizad adalah berkaitan isu pertukaran kerajaan pada waktu itu dan kedudukan ARMADA dalam kerajaan. Walaubagaimanapun, ketika arahan untuk mengeluarkan wang tersebut dibuat oleh OKT, hanya mereka bertiga sahaja yang ada bersama dan tidak melibatkan DW3 & Aizad yang ketika itu berada di ruang tamu rumah tersebut.

A [9] Menurut PW11, OKT berpandangan wang tersebut perlu dikeluarkan kerana bimbang berlaku penukaran pucuk pimpinan ARMADA dan adalah untuk kegunaan mengukuhkan kedudukan OKT selaku ketua ARMADA Bersatu. Tambahnya lagi, OKT mendakwa wang tersebut adalah hasil titik peluhnya yang mencari sumbangan dan oleh itu, dia (OKT) berhak untuk menggunakan wang tersebut sepenuhnya.

B [10] Kedua-dua saksi ini kemudiannya mengesahkan ketika perbincangan tersebut, jumlah RM1,000,000.00 tidak disebut oleh OKT. Namun begitu, PW13 dalam keterangannya menyatakan bahawa sebelum pengeluaran tersebut dibuat pada 6 Mac 2020, beliau ada menerima panggilan telefon dari OKT di mana beliau ada bertanya berapa jumlah yang perlu C dikeluarkan. OKT sebaliknya bertanya berapa jumlah wang yang ada dalam akaun dan apabila diberitahu baki dalam akaun ada lebih kurang RM1.8 juta, OKT telah mengarahkan PW13 untuk mengeluarkan sebanyak RM1,000,000.00.

[11] Kedua-dua PW11 & PW13 kemudiannya mengesahkan ada D mengeluarkan wang tersebut secara tunai dari akaun rasmi ARMADA pada 6 Mac 2020 sebagaimana yang diarahkan oleh OKT. Namun, mereka tidak pernah dimaklumkan sama ada pengeluaran ini mendapat kebenaran ataupun tidak dari Majlis Pimpinan Tertinggi Bersatu (MPT).

[12] Keseluruhan keterangan kedua-dua saksi ini walaupun cuba dicabar E oleh pihak pembelaan ketika soal balas dan melalui cadangan-cadangan yang dikemukakan, telah dipatahkan melalui jawapanjawapan yang diberikan oleh mereka berdua yang konsisten sebagaimana keterangan mereka di dalam pemeriksaan utama.

[13] isu:

F i. Adakah wang 1,000,000.00 tersebut milik ARMADA;

ii. Adakah OKT seorang atau salah seorang dari pemegang amanah bagi wang tersebut;

iii. Adakah wang tersebut dikeluarkan dari akaun ARMADA atas arahan OKT; dan

G iv. Adakah terdapat pelanggaran apa-apa arahan undang-undang yang menetapkan cara bagaimana amanah tersebut perlu disempurnakan.

[14] Bagi isu (i), (ii) dan (iii), Mahkamah ini berpendapat ianya telah dijawab secara positif melalui keterangan PW11, PW13, PW21, eksibit-eksibit P34, P35, P54 hingga P59.

H [15] Bagi isu (iv) pula, setelah merujuk kepada Perkara 18, eksibit P53 Peraturan Armada Parti Pribumi Bersatu Malaysia dan Fasal 24.8 eksibit P52, Perlembangan Parti Pribumi Bersatu Malaysia (BERSATU):

> Perkara 18 Wang dan Harta
>
> I Peraturan Wang dan Harta parti yang ternyata dalam Fasal 24 Perlembagaan hendaklah dipakai sebagai Peraturan Kewangan Armada Malaysia.

Fasal 24 Wang dan Harta Parti

> 24.8 Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi.

[16] Mahkamah ini juga telah merujuk kepada Fasal 24.7 yang menyatakan:

> Bendahari Agung hanya dibenarkan menyimpan wang tunai runcit tidak melebihi Ringgit Malaysia Lima Puluh Ribu (RM50,000.00) pada satu-satu masa. Wang sedemikian mestilah disimpan di tempat yang selamat di dalam Pejabat berdaftar untuk kegunaan perbelanjaan runcit parti.

[17] Melihat kepada ketiga-tiga peruntukan ini, kesimpulan yang dapat dibuat oleh Mahkamah ini adalah bahawa perkataan "perbelanjaan" yang disebut di dalam Fasal 24.8 Perlembagaan BERSATU mestilah dibaca sebagai termasuk juga pengeluaran memandangkan Fasal 24.7 sendiri tidak membenarkan Bendahari Agung parti menyimpan lebih dari RM50,000.00 tunai pada satu-satu masa.

[18] Ini pada pandangan Mahkamah menunjukkan maksud yang jelas bahawa segala perbelanjaaan, yang juga pengeluaran wang parti yang melebihi RM500,000.00 hanya boleh dibuat dengan kebenaran Majis Pimpinan Tertinggi parti.

[19] Oleh yang demikian, Mahkamah ini berpandangan bahawa tindakan OKT selaku Ketua ARMADA dan juga salah seorang pemegang amanah untuk akaun ARMADA dalam mengarahkan PW11 & PW13 untuk mengeluarkan wang tunai sebanyak RM1,000,000.00 dari akaun ARMADA tanpa kelulusan daripada Majlis Pimpinan Tertinggi BERSATU adalah adalah tergolong dalam tindakan yang dinyatakan di bawah seksyen 405 Kanun Keseksaan dan subseksyen (a) seksyen 107 Kanun yang sama.

[20] Seterusnya tindakan menyimpan dan membahagikan wang tunai yang dikeluarkan, tanpa disimpan di suatu tempat yang selamat di pejabat ARMADA juga menimbulkan satu inferens niat jahat (bad faith) di pihak OKT.

[21] Atas alasan yang dibincangkan ini, Mahkamah ini memutuskan bahawa satu kes *prima facie* telah berjaya diasaskan oleh pihak Pendakwaan bagi pertuduhan ini dan OKT dengan ini diperintahkan untuk membela diri.

Pertuduan kedua, ketiga dan keempat

Seksyen 403 Kanun Keseksaan

> Barang siapa dengan curangnya menyalahgunakan, atau menjadikan bagi kegunaannya sendiri, atau menyebabkan mana-mana orang melupuskan, apa-apa harta hendaklah diseksa dengan

penjara selama tempoh tidak kurang dari enam bulan dan tidak lebih dari lima tahun dan dengan sebat, dan bolehlah juga dikenakan denda.

Seksyen 4(1)(b) [Akta 613]

4. Kesalahan pengubahan wang haram

(1) Mana-mana orang yang –

a) …;

b) memperoleh, menerima, memiliki, menyembunyikan, memindahkan, mengubah, menukar, membawa, melupuskan atau menggunakan hasil daripada aktiviti haram atau peralatan kesalahan;

c) …; atau

d) ...;

melakukan kesalahan pengubahan wang haram dan apabila disabitkan boleh dipenjarakan selama tempoh tidak melebihi lima belas tahun dan juga boleh didenda tidak kurang daripada lima kali ganda jumlah atau hasil nilai daripada aktiviti haram atau peralatan kesalahan itu pada masa kesalahan itu dilakukan atau lima juta ringgit ringgit, yang mana lebih tinggi.

[22] Untuk kemudahan, ketiga-ketiga pertuduhan ini akan dibincangkan secara bersama kerana pertuduhan ketiga dan keempat bergantung kepada keputusan terhadap pertuduhan kedua.

[23] PW13 dalam keterangannya mengesahkan bahawa ARMADA Bumi Bersatu Enterprise (ABBE) didaftarkan atas nama beliau bagi tujuan mengumpul dana bagi ARMADA melalui aktiviti penjualan barangan dan aktiviti berkaitan. Perkara yang sama disahkan juga oleh PW19, iaitu Eksekutif di Suruhanjaya Syarikat Malaysia (SSM), sebagai perniagaan milik tunggal.

[24] PW13 juga mengesahkan yang beliau telah menerima arahan dari OKT untuk memindahkan wang sejumlah RM120,000,00 dari akaun milik ABBE, iaitu hasil kutipan daripada dua majlis makan malam amal ke dalam akaun Maybank milik OKT. PW13 selanjutnya memberitahu Mahkamah bahawa beliau langsung tidak terlibat dalam program majlis makan malam amal ini dan hanya sekadar menerima arahan untuk menerima wang tersebut dan seterusnya memindahkannya ke dalam akaun peribadi milik OKT.

[25] Majlis makan malam amal ini dikatakan adalah untuk mengutip dana bagi membiayai kempen pilihanraya OKT yang bertanding di Kawasan Parlimen Muar pada Pilihan Raya Umum yang ke-14 pada 9 Mei 2018. Dakwaan ini walau bagaimanapun dinafikan oleh saksi-saksi pendakwaan yang mendakwa ia adalah untuk kegunaan mana-mana ahli/calon dari ARMADA.

[26] Akaun Maybank Islamic Berhad milik ARMADA Bumi Bersatu Enterprise bernombor 562254511198 disahkan bahawa telah didaftarkan oleh PW13 melalui keterangan PW19 & PW27. Manakala, akaun Maybank Islamic Berhad bernombor 151342007253 disahkan bahawa ianya milik OKT melalui keterangan PW26 dan PW18 mengesahkan akaun Amanah Saham Bumiputera (ASB) bernombor 238246993 adalah milik OKT.

[27] Pemindahan dari akaun Maybank ABBE kepada akaun Maybank milik peribadi OKT berlaku pada tarikh berikut iaitu 8, 11, 12 dan 21 April 2018.

[28] Manakala pemindahan sebanyak dua kali dari akaun Maybank milik peribadi OKT kepada akaun ASB OKT pula adalah pada tarikh 16 dan 18 Jun 2018 dengan jumlah RM50,000.00 setiap satu transaksi.

[29] Kesimpulan dari keseluruhan keterangan di hadapan Mahkamah dan judicial notice menunjukkan bahawa:

i. 7 April 2018 Parlimen telah dibubarkan;

ii. 10 April 2018 Suruhanjaya Pilihan Raya (PWR) mengumumkan Pilihan Raya Umum akan diadakan pada 9 Mei 2018 dan tempoh berkempen adalah dari 28 April 2018 sehingga 9 Mei 2018;

iii. Majlis makan malam amal bagi tujuan mengumpul dana untuk menampung dan membiayai kempen pilihanraya OKT telah diadakan pada 7 & 8 April 2018;

iv. Wang sebanyak RM120,000.00 hasil dari (iii) telah dipindahkan dari akaun Maybank milik ABBE melalui empat (4) transaksi bertarikh 8, 9, 11 dan 12 April 2018 dan masing-masing berjumlah RM30,000.00 ke dalam akaun Maybank milik peribadi OKT; dan

v. Sebanyak RM100,000.00 telah dipindahkan dari akaun tersebut ke dalam akaun ASB milik OKT melalui dua (2) transaksi pada 16 & 19 Jun 2018 dan masing-masing berjumlah RM50,000.00.

[30] Dakwaan dan cadangan pihak OKT di peringkat ini kononnya wang tersebut adalah untuk menggantikan perbelanjaan yang telah dibuat oleh OKT telah dinafikan oleh PW13 yang jelas menegaskan bahawa OKT tidak pernah menunjukkan apa-apa resit perbelanjaan ataupun memaklumkan beliau bahawa itulah tujuan kegunaan wang tersebut.

[31] PW29 selaku Pegawai Penyiasat juga ketika diajukan persoalan yang sama dengan jelas menyatakan bahawa ketika siasatan dijalankan, apabila OKT telah menyatakan bahawa segala butiran perbelanjaan kempen pilihanraya, beliau boleh dirujuk kepada seorang individu bernama Mohamed Amshar bin Aziz. Namun, menurut PW29, ketika perkara ini dirujuk kepada penama ini, beliau telah menafikan mempunyai sebarang maklumat tentangnya.

A [32] Setelah mempertimbangkan keterangan seperti yang dinyatakan di atas, Mahkamah ini berpuas hati bahawa wang hasil kutipan dari majlis makan malam amal ini sebenarnya adalah bagi tujuan membiayai perbelanjaan kempen pilihanraya OKT bagi pilihanraya yang akan diadakan sebulan (1 bulan) selepas majlis tersebut.

B [33] Walau bagaimanapun, tindakan OKT mengarahkan PW13 untuk mengeluarkan dan memindahkan wang tersebut (RM120,000.00) ke dalam akaun peribadi milik OKT hanya beberapa hari selepas kutipan dibuat dan sebelum kempen pilihanraya bermula adalah suatu tindakan yang termasuk di bawah kesalahan seksyen 403 KK, iaitu OKT telah menyalahgunakan harta untuk kegunaan sendiri.

C [34] Dilihat dari keseluruhan keterangan dan keadaan sewaktu itu, tiada alasan bagi OKT untuk memindahkan wang tersebut keluar dari akaun Maybank ABBE, kecuali untuk membiayai kempen pilihanraya beliau. Pembiayaan ataupun sebarang bayaran boleh dibuat terus melalui akaun Maybank ABBE ini, tanpa perlu ianya dipindahkan ke dalam akaun peribadi milik OKT.

D [35] Tindakan ini, pada hemat Mahkamah ini jelas menunjukkan niat OKT untuk menyalahgunakan wang tersebut untuk kegunaannya sendiri.

[36] Seterusnya, tindakan OKT memindahkan RM100,000.00 kedalam akaun ASB beliau sebagaimana pertuduhan ketiga dan keempat, adalah E termasuk dalam tindakan yang dinyatakan di bawah seksyen 4(1)(b) Akta 613, di mana kesalahan di bawah seksyen 403 KK adalah termasuk dalam definisi kesalahan berat yang dinyatakan dalam Jadual Ke Dua Akta 613.

[37] Berdasarkan keadaan yang dibincangkan di atas, Mahkamah ini berpuas hati bahawa pihak Pendakwaan telah berjaya mengasaskan satu F kes *prima facie* terhadap OKT bagi keempat-empat pertuduhan dan OKT dengan itu diperintahkan untuk membela diri.

[26] At the close of the defence, the LTJ found as follows:

Pembelaan

G [38] OKT telah memilih untuk memberi keterangan bersumpah di dalam pembelaan beliau dan telah mengemukakan seramai empat orang saksi.

[39] Secara ringkasnya pembelaan OKT adalah seperti berikut:

> Bagi pertuduhan pertama; OKT menafikan sama sekali pernah mengarahkan PW11 & PW13 untuk mengeluarkan apa-apa wang H dari akaun ARMADA, sebaliknya hanya dimaklumkan bahawa sejumlah wang telah dikeluarkan bagi tujuan dan pelaksanaan bantuan yang dibincangkan oleh kepimpinan G5 yang juga termasuk beliau sendiri.

[40] Malah OKT turut menafikan yang beliau ada dimaklumkan tentang jumlah sebenar wang yang telah dikeluarkan. I

[41] DW3 yang turut hadir dalam perjumpaan di rumah OKT beberapa hari sebelum pengeluaran wang RM1000,000.00 dibuat, turut menafikan yang OKT ada mengarahkan PW13 untuk membuat pengeluaran tersebut ketika perbincangan mereka berlima di rumah OKT.

[42] Menurut beliau lagi bantuan untuk Covid-19, bantuan hari raya, ramadhan hanya boleh dibuat bersama oleh kepimpinan G5 dan jumlah pengeluaran adalah berdasarkan kepada keperluan sebenar setelah PW13 berbincang dengan EXCO ARMADA yang bertanggungjawab. A

[43] Dari keseluruhan keterangan ini, Mahkamah ini berpendapat bahawa adalah tidak munasabah bagi seorang pemimpin sayap parti politik tidak mempunyai pengetahuan tentang pengeluaran sejumlah wang besar dari akaun sayap tersebut, lebih-lebih lagi fakta bahawa sejumlah wang yang besar telah dikeluarkan. B

[44] Selain dari itu, penafian OKT berkenaan beliau mempunyai pengetahuan tentang penyimpanan dan kegunaan wang tersebut juga adalah sesuatu yang sukar diterima akal. C

[45] Bagi pertuduhan kedua, ketiga dan keempat, OKT menegaskan bahawa wang kutipan hasil majlis makan malam yang diadakan adalah untuk menggantikan perbelanjaan yang telah dikeluarkan dari wang beliau sendiri yang telah digunakan olehnya bagi menampung kos kempen pilihanraya beliau sendiri. D

[46] Untuk menyokong dakwaan ini, OKT telah mengemukakan D85, D86, D87, D88 dan D89 iaitu poster majlis makan malam, hantaran di Facebook dan ciapan di Twitter.

[47] DW2 dan DW4 juga dalam keterangan mereka menyatakan bahawa segala program meraih dana tersebut adalah bagi tujuan kempen OKT sebagai calon dalam PRU14. E

[48] Setelah memberikan pertimbangan terhadap pembelaan yang dikemukakan ini dan keseluruhan keterangan Pihak Pendakwaan, Mahkamah ini mendapati bahawa tiada satu pun keterangan yang dikemukakan oleh OKT menunjukkan bahawa kutipan majlis makan malam yang akan diadakan adalah untuk menggantikan perbelanjaan yang telah dibuat oleh OKT sebelum ini, sebaliknya adalah untuk menampung kempen pilihanraya OKT. F

[49] Selain dari itu, jika dilihat dari kronologi dan tarikh-tarikh yang berkaitan menunjukkan bahawa pemindahan wang dari akaun ABBE kepada akaun peribadi Maybank OKT berlaku sebelum pilihanraya berlangsung. Manakala, pemindahan wang ke akaun ASB OKT pula berlaku sebulan selepas pilihanraya berlangsung. G

[50] Penyata-penyata bank yang dikemukakan iaitu P77, P73, P72 (a-d), P71 (a-d), P48, P37, P36 tidak menunjukkan sebarang pengeluaran yang boleh dikatakan sebagai perbelanjaan bagi kempen pilihanraya. H

[51] Justeru itu, dakwaan bahawa OKT telah membelanjakan wang beliau sendiri juga tidak disokong oleh mana-mana keterangan. Tanpa sebarang bukti untuk menyokong fakta ini, dakwaan yang wang terlibat adalah untuk menggantikan wang OKT sendiri juga adalah tidak berasas. (Seksyen 101,102 dan 103 Akta Keterangan). I

A **The Appeal**

[27] The main grounds of the appellant's appeals summarily are as follows:

(i) The LTJ erred in law and/or in fact when His Lordship ruled that *prima facie* case had been proven by the prosecution in respect of the charges and in deciding as such:

B

(a) the LTJ erred in failing to decide that there was no offence as per the charges even if all the prosecution evidence was unrebutted or unexplained; and

C

(b) the LTJ erred when His Lordship failed to assess the credibility of the main prosecution witnesses especially PW13

(ii) The LTJ failed to take into consideration and/or appreciate the ingredients and requirements of s. 405 of the PC and consequently failed to conclude that the appellant's act did not amount to an offence under s. 405 of the PC read together with s. 109 of the PC.

D

[28] In deciding there was a *prima facie* case against the appellant under the s. 403 charge, the LTJ:

(i) contradicted his own finding that the sum of RM120,000 in fact "belongs" and/or is for the appellant's exclusive use to finance his election campaign;

E

(ii) took into consideration irrelevant facts;

(iii) failed to decide that the s. 403 charge was groundless; and

F

(iv) erred in relying on hearsay evidence

[29] As a result of the errors committed by the LTJ with respect to the s. 403 charge at the close of the prosecution case, the LTJ also erred in deciding that there was a *prima facie* case of the AMLA charges given that the AMLA charges were predicated on the s. 403 charge.

G **[30]** The appellant further forwarded alternative grounds of appeal which were canvassed as follows:

(i) there was a breach of s. 182A(1) of the Criminal Procedure Code ('CPC'); and

H (ii) there was a failure of justice as submissions made were not considered.

The Prosecution's/Respondent's Contentions

[31] Summarily and in regard to the abetment charge, the prosecution contends that the instruction for withdrawal of the RM1 million existed for the following reasons:

I

(i) PW11 and PW13 affirmed that the appellant had instructed them to withdraw the RM1 million;

(ii) the defence's exhs. D79B, D79C, D80 support PW11 and PW13's versions;

(iii) the appellant's conviction based on the evidence of PW11 and PW13 is safe

(iv) the instructions given by the appellant to PW11 and PW13 are tainted with *mala fide;*

(v) the prosecution's witnesses are credible and there was no bad intention on their part against the appellant;

(vi) the prosecution's witnesses had gone through vigorous cross-examination but remain consistent with their evidence

[32] It is further contended that the appellant's defence was a mere denial and failed to raise reasonable doubt on the prosecution's case.

[33] In regards to the s. 403 charge and AMLA charges, the prosecution reiterates that reliance on PW13's evidence is safe to convict the appellant. PW13 is said to have not been involved in the fundraising events and that all he did was to transfer the fundraising proceeds or monies to his company's account, ABBE upon the appellant's instructions. PW13 did not benefit from the transfer of monies and was not informed of the purpose of the transfer, *ie*, reimbursement for the appellant's political campaign.

[34] It is further contended that s. 403 charge is not defective and was framed in accordance with ss. 152, 153 and 154 of the CPC. The s. 403 charge is based on the mens rea and actus reas on the part of the appellant in misappropriating the monies.

[35] The conviction for the AMLA offences is argued to be safe since there exist illegal activities on the part of the appellant in transferring the monies into his ASB account.

Evaluation And Findings

The Abetment Charge

[36] The relevant provisions of the law in regards to the abetment charge are the following:

(i) S. 107 of the PC which provides:

Abetment of a thing

107. A person abets the doing of a thing who -

(a) instigates any person to do that thing;

(aa) commands any person to do that thing;

(b) engages with one or more other person or persons in any conPWiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conPWiracy, and in order to the doing of that thing; or

A (c) intentionally aids, by any act or illegal omission, the doing of that thing.

ii. S. 108 of the PC which provides

Abettor

B 108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

[37] The abetment charge states that the appellant abetted PW13 in C committing the offence of criminal breach of trust under s. 406 of the PC which provides:

Punishment of criminal breach of trust

406. Whoever commits criminal breach of trust shall be punished with imprisonment for a term not exceeding ten years and with whipping, and D shall also be liable to fine

[38] Section 405 of the PC defines the offence of criminal breach of trust as follows:

Criminal breach of trust

E 405. Whoever, being in any manner entrusted with property, or with any dominion over property either solely or jointly with any other person dishonestly misappropriates, or converts to his own use, that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the F discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[39] In the present matter, the LTJ had found the *actus reus* of the criminal breach of trust, *ie*, the disposal of the RM1 million was in violation of art. 24.8 and art. 24.7 of the Bersatu Constitution. This could be gleaned G from paras. [13]-[19] of the judgment. The LTJ was of the view that art. 24.8 of the Bersatu Constitution was the mode of how the money or trust was to be discharged. In other words, it was the LTJ's view that the terms of entrustment are governed by art. 24.8 of the Bersatu Constitution, where the breach of it, constitutes misappropriation.

H **[40]** Upon reading these provisions of the Bersatu Constitution, the LTJ opined that expenditure or "perbelanjaan" mentioned in art. 24.8 must be read to include withdrawal given that art. 24.7 of the same Constitution restricts the Treasurer of Bersatu to keep more than RM500,000 cash at one time. Following thereto, the LTJ ruled that being the Head of Armada as I well as one of the trustees of Armada's account and in instructing PW11 and

PW13 to withdraw RM1 million in cash from the Armada's account without the approval of Bersatu's Supreme Council, the appellant's act, falls under the actions described in ss. 405 and ss. 107(a) of the PC.

[41] We will first address the issue of whether the act of withdrawing RM1 million from the Armada's account by PW13 was an act in violation of art. 24.8 of the Bersatu Constitution.

[42] Article 24.8 of the Bersatu Constitution states:

> Perbelanjaan yang melebihi Ringgit Malaysia Lima Ratus Ribu (RM500,000.00) pada satu-satu masa tidak boleh dilakukan tanpa kebenaran diperoleh terlebih dahulu daripada Majlis Pimpinan Tertinggi.

[43] It is therefore apparent that only the word "perbelanjaan" is used in art. 24.8 of the Bersatu Constitution which would mean "expenses" and not "withdrawal" where the translation of which in Bahasa Malaysia is "pengeluaran". We cannot find any equation of the word 'withdrawal" as "perbelanjaan" in any of the Bahasa Malaysia dictionaries. Furthermore, there is no definition of "perbelanjaan" provided in Bersatu Constitution to include "pengeluaran" or withdrawal. On its plain and ordinary meaning, the word "perbelanjaan" in art. 24.8 of the Bersatu Constitution would connote some form of spending. Therefore, when the LTJ stated that "perbelanjaan" must be read to include "pengeluaran", we disagree. The one-off withdrawal of the RM1 million in the present matter cannot be equated to the action of "one-off" expenses or "perbelanjaan". We find that there exists no provision in the Bersatu's Constitution expressly prohibiting the withdrawal or "pengeluaran" of money in excess of RM500,000 without the prior approval of Bersatu's Supreme Council.

[44] Article 24.7 of the Bersatu Constitution merely provides that the Treasurer cannot hold more than RM50,000 at any one time and the money must be kept in a safe place in the registered office for the party's use as petty cash. In examining the facts and evidence at the trial, it was established that subsequent to the withdrawal of the RM1 million, PW13 distributed RM650,000 and RM250,000 respectively to Daniel Kusari (PW9) and Naqib Ab Rahim (PW8). During examination-in-chief ("EIC") PW9 confirmed that PW13 distributed to him RM650,000 for Armada's programs where RM263,700 was spent for the said program. PW8 on the other hand in EIC testified that after receiving RM250,000 from PW13, he returned RM100,000 to PW13 upon the latter's instruction that the money was for Armada's programs. PW25, as the investigating officer in cross-examination on 27 September 2022, testified that the money spent was less than RM500,000. Premised on the evidence of PW8, PW9 and PW25, it follows that the money spent from the impugned RM1 million was below the RM500,000 threshold and therefore the Bersatu Supreme Council's approval was never required.

[45] We therefore find that the LTJ erred in referring to art. 24.7 of the Bersatu Constitution equates "withdrawal" with "expenses" from the same provision. To read the word "perbelanjaan" as necessarily encompassing "pengeluaran" is not a conclusion that must follow from art. 24.8 of the Bersatu Constitution. As such the withdrawal of the RM1 million from the Armada's account by PW13 cannot be said to have been used or disposed of in violation of a direction of law.

[46] Now we come to the offence of abetment and criminal breach of trust, the offence that the appellant is said to have abetted. Generally, the offence of abetting is said to be committed when the abettor was aware of the facts sufficiently to enable him to know that the act was unlawful. The abettor could only be convicted if he knew all the circumstances which constituted the offence (see: *PP v. Datuk Tan Cheng Swee* [1979] CLJU 74; [1979] 1 LNS 74; [1979] 1 MLJ 166).

[47] The Federal Court in *Hj Abdul Gani Ishak & Anor v. PP* [1981] CLJU 96; [1981] 1 LNS 96; [1981] 2 MLJ 230 held that the offence of abetment requires the abettor to "substantially assist", "actively suggest" or "stimulated" the principal offender in the commission of the offence. The Federal Court elucidated as follows:

> To succeed in their charge of abetment against 2nd accused, the prosecution will have to, in addition to the proving of the case against 1st accused, show that heinstigated, conPWired or aided the 1st accused in the commission of the offence. He must be shown to have knowledge of the consequence of his act – *National Coal Board v. Gamble* [1958] 1 QB 11, 18 and intention to aid.
>
> …
>
> *It is of the essence of the offence of abetment that the abettor should substantially assist the principal offender towards the commission of the principal offence. In fact it is an essential ingredient in a prosecution for abetment that there must be some evidence to show that the abettor actively suggested or stimulated the principal offender to the act by any means or language, direct or indirect, in the form of "expressed solicitation" or of "hints, insinuations or encouragement".* There must also be common purpose or intent to aid or encourage the person who commits the principal crime and either an actual aiding or encouraging or a readiness to aid or encouraging will be required. The word "instigates" in section 107 of the Penal Code does not merely mean placing of temptation to do a forbidden thing but actively stimulating a person to do it … (emphasis added)

[48] There are five limbs of *actus reus* or physical element that constitute the offence of criminal breach of trust under s. 405 of the PC. They are:

(i) misappropriation;

(ii) conversion to own use;or

(iii) use or disposal in violation of a direction of law; or

(iv) use or disposal in violation of a legal contract; or

(v) "suffering" another person to do any of (i) to (iv)

[49] In the present matter the physical act or *actus reus* of "withdrawal" of money does not fall under any of the five limbs of the *actus reus* of criminal breach of trust defined under s. 405 of the PC. So, when PW13 being one of the three signatories or trustees of Armada's account and he is not prohibited from holding Armada's funds, withdrew the RM1 million from the Armada's account, he cannot be said to have committed criminal breach of trust and it necessarily follows that the appellant cannot be said to have abetted the commission of an offence.

[50] It must be borne in mind that for each limb under the criminal breach of trust, the actual use of the money entrusted is the key element to determine whether any of the five different *actus reus* has been established. In the case of *Tan Sri Tan Hian Tsin v. PP* [1978] CLJU 199; [1978] 1 LNS 199; [1979] 1 MLJ 73, the court stated that temporary deprivation of money for a short time would amount to criminal breach of trust only when the money has been used or spent contrary to its intended purpose.

[51] The prosecution in the present matter has opted for misappropriation as the *actus reus* for the criminal breach of trust said to have been committed by PW13. This is borne out in the charge where it is stated PW13, "dengan secara tidak jujur menyalahgunakan dana tersebut …"

[52] In *Ratanlal and Dhirajlal's Law of Crimes*, 28th edn vol. 3 at p. 2923, the learned author stated that "misappropriation" means "improperly setting apart for one's use to the exclusion of the owner".

[53] Section 108 of the PC provides the definition of "abettor". There are two limbs under s. 108 of the PC.

(i) firstly, the offence abetted is committed due to the instigation or command and;

(ii) secondly, the offence abetted was not committed but if committed the act would be an offence.

Apart from the two limbs, it must be noted that dishonesty is an important element to prove.

[54] The prosecution says that PW13 has committed a criminal breach of trust by misappropriating the RM1 million as per the charge. On the facts of the case herein, we find there is no evidence disclosing PW13 had withdrew the impugned sum of RM1 million, dishonestly. When he was asked as to why he had "clear" the money to PW8 and PW9, PW13 said "Saya hanya mengikut arahan YB Syed Saddiq" and that without the

A appellant's instructios, he would not have "clear" the money to PW8 and PW9 (see EIC of PW13 on 6 July 2022). PW8 and PW9 had testified and affirmed that all the monies that were spent from the RM1 million withdrawal were spent on Armada's and for Armada's programs or activities. Where the evidence adduced shows that the money was distributed for B Armada's programs, PW13, cannot be said to have been actuated with dishonesty in distributing the RM1 million. We therefore find the principal offence under s.405 of the PC is groundless.

[55] It must be emphasised that the prosecution had framed the abetment charge, stating that PW13 had misappropriated the RM1 million. In other C words, according to the abetment charge, the principal offence was committed. Therefore, the offence said to have been committed by the appellant falls under the first limb and not the second limb of the PC.

[56] Under the first limb, if the appellant asked PW13 to use the money in the Armada's account not for Armada's programs and PW13 did it, the D appellant can be said to have abetted criminal breach of trust as the element of misappropriation exists. We say that the principal offence of criminal breach of trust in the instant case is groundless because it cannot be disputed that the RM1 million withdrawn by PW13 was never misappropriated but was used for Armada's programs. In those circumstances the appellant could E not be said to have abetted the commission of the offence of criminal breach of trust when the offence itself does not satisfy any of the elements under s. 405 of the PC.

[57] The real question or issue arising from the abetment charge is whether the alleged instruction or command by the appellant to PW13 to withdraw F the RM1 million tantamount to an abetment to commit criminal breach of trust. It is our considered view that causing or commanding or instructing someone to withdraw money cannot be equated to disposal or conversion as prescribed under s. 405 of the PC. There must be actual usage or appropriation of the money in the first place. PW8 and PW9 had testified G and affirmed that all the monies that were spent from the RM1 million withdrawal were spent on Armada's and for Armada's programs or activities. Nowhere in the evidence shows that the appellant had received a single cent of the impugned sum. We agree with learned counsel's submission that the act of withdrawal does not fit into any of the physical or *actus reus* elements H under s. 405 of the PC and that withdrawal at its highest amounts to a preparatory act of the *actus reus* of criminal breach of trust. We have been referred to the case of *Thiangiah & Anor v. PP* [1976] CLJU 166; [1976] 1 LNS 166; [1977] 1 MLJ 79 where the court had stated that:

> I There are four stages in every crime. First an intention to commit the crime, secondly the preparation for its commission, thirdly the attempt to commit it and finally the actual commission of the crime. *The mere forming of an intention to commit a crime and making preparations for its commission are not criminal acts and are not punishable under the law.* (emphasis added)

[58] Learned Deputy Public Prosecutor argued that it is not necessary for the principal offence to be committed and referred to Explanation 2 of s. 108 of the PC which states that:

> To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

[59] As we have stated earlier, the prosecution cannot rely on Explanation 2 of s. 108 of the PC because they have framed the charge to state that the offence of criminal breach of trust was committed by PW13. The prosecution cannot be allowed to change their stance at their own convenience. Contrary to the charge framed, learned Deputy Public Prosecutor then reminded the court that the offence of abetment stands on its own and argued that the *actus reus* in the instant case is the command by the appellant to PW13. It was further argued that the court will only have to determine whether the alleged command given by the appellant was prompted by evil intention. It was contended that in instructing to withdraw the money, the appellant was prompted with evil intention or bad motives. According to learned Deputy Public Prosecutor, the evil intention on the part of the appellant can be garnered from the evidence of PW13 and PW11. The appellant was said to be concerned with the turmoil amongst the top leadership of Armada and that the monies in the Armada's account was as a result of his efforts or "titik peluh". Hence, the instruction or command was given to PW13 to withdraw and to "clear" the money.

[60] We have found earlier that the instruction to withdraw does not fit into any of the limbs or *actus reus* of the offence of criminal breach of trust. The prosecution fails to explain how an instruction to withdraw can amount to an abetment of criminal breach of trust being the principal offence said to have been committed by PW13. We are of the considered view that the events leading to or after the purported instruction to "clear" is irrelevant. The alleged instruction would be an abetment of criminal breach of trust only if the appellant had instructed PW13 to do any *actus reus* in s. 405 of the PC.

[61] Even if the prosecution may rely on the second limb of s. 108 of the PC, we find that the prosecution failed to prove the dishonest intent on the part of the appellant in giving the instruction or command to withdraw the RM1 million from the Armada's account. The prosecution relied heavily on the evidence that the appellant was said to have instructed to "clear" the RM1 million after RM250,000 was reported missing from the appellant's house. We find that PW13 had given a contradictory evidence with regards to whether or not this "clearkan" was said.

[62] We find that during cross-examination on 6 July 2022, PW13 repeatedly stated he could not remember if the appellant had specifically used the words "clearkan". He conceded that this was merely his understanding of the conversation. He said:

A GDW: Ini dua tahun lalu, lebih sedikit. Boleh ingat secara khusus apa perkara-perkara yang digunakan secara spesifik semasa perbincangan itu?

PW13: Spesifik tidak tapi saya boleh ingat maksud -

B GDW: Ok spesifik tidak ingat tapi mengikut pemahaman kamu maksud dia clearkan?

PW13: Betul

…

C GDW: I put it to you he did not use those words. Its fahaman kamu, that's what you said earlier. That is your understanding of it, right?

PW13: Yes.

[63] On the same date, 6 July 2022, during cross-examination, PW13 also stated that he understood "clearkan" to mean the monies were to be kept safe which we find is consistent with his duties as Assistant Treasurer of Armada:

D GDW: Okay, this means the instruction was to keep it because you are going to use it?

PW13: Yes.

E GDW: It would mean keep it safely because you are going to use it?

PW13: Yes.

GDW: Keep it safely because it is money of Armada, for Armada, right?

PW13: Yes.

F **[64]** On 23 August 2022, during cross-examination, PW13 again answered as follows:

GDW: Saya katakan Syed Saddiq tanya soalan itu kerana kamu Penolong Bendahari Armada dan pemegang amanah akaun CIMB masa itu.

PW13: Betul

G …

GDW: So your evidence is that clearkan maksudnya simpan dengan selamat.

PW13: Betul.

H **[65]** At this juncture and from the above evidence, it is irrelevant for the LTJ to find that PW13's acts of storing and distributing the withdrawn cash without storing it in the Armada's office raised an inference of bad faith more so when the *actus reus* was not proven.

I **[66]** Then, on the same date, 23 August 2022, PW13 changed his stance during cross-examination and stated that the appellant specifically instructed him to "clearkan" the impugned sum. We find no satisfactory explanation was led to explain the contradiction between PW13's evidence on 6 July 2022 and his evidence on 23 August 2022.

[67] Evidently, the context in which the conversation relating to the "clearkan" was held at the time when the appellant's house was broken into and money was stolen from the safe therein. It must be reiterated that the RM1 million was withdrawn on 6 March 2020, and the focus of the investigation apparently was on the possibility that the monies were taken from insiders. As such, in light of the circumstances that happened and the conversation that was held, it is logical that the need arose to keep the monies held by PW13 safe. The cross-examination of PW25, the investigating officer supports this. In cross-examination of PW25 on 27 September 2022, he answered as follows:

GDW: Dalam ini, ada orang pecah masuk rumah Syed Saddiq

PW25: Betul

GDW: Dalam insiden itu, ada wang yang telahpun diambil dari peti besi beliau

PW25: Tidak pasti.

…

GDW: Dalam siasatan itu, Syed Saddiq juga disiasat kerana dikatakan mungkin ada hal yang dilakukan oleh orang dalaman

PW25: Betul

GDW: Ini bermaksud ada orang dalaman yang mungkin ambil duit Syed Saddiq tersebut?

PW25: Tidak pasti

GDW: Ada siasat Rafiq?

PW25: Ada

GDW: Dia katakan ada arahan untuk clearkan duit?

PW25: Betul

GDW: Itu fahaman beliau?

PW25: Betul

GDW: Dalam kes ini ianya dikatakan berlaku selepas 31 Mac. Beliau kata beliau faham untuk clearkan selepas 31 Mac itu untuk selamatkan wang tersebut?

PW25: Wang mana?

GDW: Wang balance yang ada dipegang dari 1,000,000 itu

PW25: Betul.

[68] We therefore find there can never be the element of dishonesty on the part of the appellant in this context relating to the word "clearkan" which we viewed represents a valid concern regarding the safety of the monies in PW13's hand. The evidence of the manner in which the funds were

distributed, *ie*, for the COVID-19 assistance, Raya, Ramadan and welfare (as per the evidence of PW13 in cross-examination on 23 August 2022), debunks the allegations of dishonesty on the part of the appellant. It may safely be concluded that there was never the intention of the appellant to cause wrongful loss to Armada or wrongful gain to him as not a single cent was received by him. Again, we find the abetment charge must consequently fall.

[69] The prosecution then gathered all the evidence obtained by PW25 and relied on the conduct and omission of the appellant before the withdrawal until 28 May 2020 when the appellant was no longer holding any position in Bersatu or Armada to prove the appellant's dishonest intention in instructing to withdraw the RM1 million from the Armada's account. The prosecution argued that the series of the appellant's conduct or omission is relevant pursuant to ss. 5, 6, 7, 8 and 9 of the Evidence Act 1950 as his conduct and omissions are said to be connected with the facts in issue.

[70] It is the prosecution's version that the Sheraton Moves which happened sometime at the end of February 2020 had triggered the conduct of the appellant subsequently. It was contended that consequent to the Sheraton Moves the appellant had given the instruction to PW13 to withdraw the RM1 million. It was argued that this piece of evidence of PW13 was not challenged. The appellant was said to be concerned or worried about the change in the top leadership of Bersatu or Armada before the RM1 million was withdrawn. This, according to the prosecution, discloses the evil intention of the appellant. The appellant was argued to have treated Armada's money as his own and that he could use the same without having to prepare any working paper and did not inform PW13 whether the approval of the Supreme Council was obtained. It was further contended that the appellant had used PW13 and the members of the WhatsApp group known as "Value Add" group to clear his image. The appellant was said to have dragged his innocent parents into trouble caused by none other than him. The appellant was argued to have failed to explain the reason as to why he chose the change of guard in the political scenario of Bersatu and Armada is one of the reasons for him to instruct PW13 to withdraw the RM1 million. The appellant was argued to have offered only bare denials insufficient to rebut or dislodge the *prima facie* evidence which was established by the prosecution. The appellant's witness, DW3 is said to be unreliable and that DW3 was unaware of the instruction given by the appellant to PW13. In short, the appellant's defence was said to be an afterthought. On the other hand, the evidence of PW13 is said to remain consistent, and even his statement, D79B and D79C, tendered by the defence, were not utilised by the defence to challenge the truth of PW13's evidence.

[71] We are of the considered view that what prompted the appellant to give the instruction or command to withdraw the RM1 million to PW13 is not an issue. We find that the withdrawal was consequential to the decision to have the respective programs. As stated earlier, the issue is whether, in

giving such a command or instruction, the appellant abetted the offence of criminal breach of trust, *ie*, whether the withdrawal is an *actus reus* of criminal breach of trust or if committed is an *actus reus* of criminal breach of trust. The answer to the questions are in the negative because giving instructions or commands to withdraw falls short of the five *actus reus* of criminal breach of trust.

[72] The LTJ found that the withdrawal of the RM1 million contravened cl. 24.8 of the Bersatu Constitution which we disagree with. The withdrawal, which is said to be the act instigated or commanded, does not involve any disposal of money. The prosecution contends that the withdrawal was done without a working paper, but no evidence of such working paper was adduced. Lastly, we have found earlier, that the withdrawal did not involve misappropriation of money.

[73] Since the prosecution case is that the act constituting the principal offence is the withdrawal of monies from Armada's account by PW13 on 6 March 2020, the appellant's conduct after the withdrawal is irrelevant as they do not form facts in issue. D79 (a)-(d) were admitted for the purpose of impeachment and the contradictory portion cannot be admissible as evidence of the fact stated therein except for the purpose of impeaching PW13's credit. They do not form substantive or independent evidence of fact contained therein (see: *PP v. Wong Yee Sen & Ors* [1990] 1 CLJ 325; [1990] 2 CLJ (Rep) 902; [1990] 1 MLJ 187 and *PP v. Lo Ah Eng* [1965] 31 MLJ 241).

[74] The incident of theft at the appellant's house and the WhatsApp analysis is also irrelevant. At this juncture we must state our observation. It cannot be said that the Malaysian Anti-Corruption Commission ("MACC") knew of the withdrawal of the RM1 million until PW13 was arrested in early June 2020. PW25 was appointed as the investigating officer only on 7 June 2020 to investigate the criminal breach of trust by PW13 and a few others. Therefore, we agree with the defence's contention that the incident only explains the appellant's concern about the safety of fund kept by PW13 and the latter was asked to keep monies safely. There was no evidence that PW13 was told to hide or distribute. PW13 sought advice from PW10 and PW11 on whom the monies ought to be distributed and what PW13 did subsequently was in accordance with the purposes decided earlier. Importantly, PW13 did not seek advice from the appellant on how the money would be distributed. We are of the considered view that the instruction to "clear" could only mean to ensure the money was kept safely for the distribution.

[75] The prosecution relied heavily on the evidence of PW13 and PW11 and the LTJ found their evidence to be consistent. This is what the LTJ said in para. [12] of the judgment:

A

> [12] Keseluruhan keterangan kedua-dua saksi ini walaupun cuba dicabar oleh pihak pembelaan ketika soal balas dan melalui cadangan-cadangan yang dikemukakan, telah dipatahkan melalui jawapan-jawapan yang diberikan oleh mereka berdua yang konsisten sebagaimana keterangan mereka di dalam pemeriksaan utama.

B **[76]** However, in coming to that finding, we find that the LTJ did not seem to get the facts right. In para. [10] of the judgment, the LTJ found as follows:

> [10] Kedua-dua saksi ini kemudiannya mengesahkan ketika perbincangan tersebut, jumlah RM1,000,000.00 tidak disebut oleh OKT. Namun begitu, PW13 dalam keterangannya menyatakan bahawa sebelum pengeluaran tersebut dibuat pada 6 Mac 2020, beliau ada menerima panggilan telefon dari OKT di mana beliau ada bertanya berapa jumlah yang perlu dikeluarkan. OKT sebaliknya bertanya berapa jumlah wang yang ada dalam akaun dan apabila diberitahu baki dalam akaun ada lebih kurang RM1.8 juta, OKT telah mengarahkan PW13 untuk mengeluarkan sebanyak RM1,000,000.00.

C

D **[77]** Upon perusing the evidence of PW11, we understood that what PW11 said was that during the meeting in the appellant's house, the instruction was given to him and PW13 to withdraw the RM1 million, but PW11 denied he knew the balance in the account. PW13, on the other hand initially said during the meeting, the appellant inquired about the balance in the account, E and after being told RM1.8 million, the appellant instructed to withdraw RM1 million. However, during cross-examination when confronted with his witness statement, PW13 resiled and said no amount was mentioned during the meeting. The amount of RM1 million was said to have been mentioned in a WhatsApp call later, after PW13 told the appellant the balance in the F account, and PW13 maintained this stand during re-examination. We find PW13 and PW11 are inconsistent with one another. We further find that PW13's evidence during EIC is inconsistent with his evidence in cross-examination and re-examination. We will highlight the inconsistencies later.

[78] We therefore disagree with the LTJ in saying that PW13 and PW11 G said no amount was stated to be withdrawn during the meeting. The only aspect that PW13 and PW11 were consistent is the instruction to withdraw the RM1 million was given for the purposes of the Armada's programs.

[79] Ultimately, whatever bad motive or evil intention of the appellant is attributed by the prosecution, we find the fact remains that the instruction H was given following a discussion among the G5 and after they had decided the programs to be carried out. There is nothing evil on the part of the appellant as the chief of Armada to have wanted to use the money for the party's program. After all, the purpose of Armada's establishment amongst others was to "membela kebajikan rakyat dan membasmi kemiskinan tanpa I mengira kaum dan agama." (see: art. 6.10 of the Bersatu's Constitution). This demonstrates that contrary to the prosecution's case, the appellant acted to give effect to and not in contravention of the Bersatu's Constitution.

[80] In the circumstances alluded to above, we find that the prosecution failed to prove the abetment charge even at the *prima facie* stage.

The S. 403 Charge

[81] The prosecution alleges that on 8, 11, 12 and 21 April 2018, the appellant converted RM120,000 to his own use by causing PW13 to dispose of the same.

[82] Based on the dates stated in the charge, it can be gleaned that the prosecution case is that the appellant dishonestly converted the RM120,000 to his own use by receiving the impugned sum in his Maybank account because the dates all pointed to the dates when the monies were transferred.

[83] Section 403 states:

> Dishonest misappropriation of property
>
> 403. Whoever dishonestly misappropriates, or converts to his own use, or causes any other person to dispose of, any property, shall be punished with imprisonment for a term which shall not be less than six months and not more than five years and with whipping and shall also be liable to fine.

[84] The *actus reus* of the offence under s. 403 of the PC is misappropriation or conversion or causing the disposal of property of another person. In *Law of Crimes by Ratanlal & Dhirajlals*, (26th edn), at p. 2264, it states:

> 2. Scope … The essence of this offence of criminal misappropriation is that **the property of another person comes into the possession of the accused in some neutral manner and is misappropriated or converted to his own use by the accused** … (emphasis added)

[85] In the same literature, the author further laid down the ingredients of the offence under the same section to be:

> 5. Ingredients – The section requires the following ingredients:
>
> (i) **The property must belong to a person other than the accused;**
>
> (ii) The accused must have misappropriated property or converted it to his own use; and
>
> (iii) There must be dishonest intention on the part of the accused. (emphasis added)

[86] The evidence of PW19 revealed that the ABBE account was initially registered under PW13's name for the purpose of collecting and managing funds for Armada through the sale of merchandise and relevant activities.

[87] PW13 in re-examination confirmed that the ABBE account was cleared beforehand for the purpose of the appellant's fundraising. It was established that the monies collected from the fundraising events were RM120,000 which was then transferred from the ABBE's account to the appellant's Maybank account *via* four transactions respectively amounting to RM30,000 each, upon the appellant's instructions.

[88] In his judgment, the LTJ made a finding of fact that the RM120,000 was used by the appellant to finance his election expenses. The LTJ stated:

> [32] Setelah mempertimbangkan keterangan seperti yang dinyatakan di atas, Mahkamah ini berpuas hati bahawa wang hasil kutipan dari majlis makan malam amal ini sebenarnya adalah bagi tujuan membiayai perbelanjaan kempen pilihanraya OKT bagi pilihanraya yang akan diadakan sebulan (1 bulan) selepas majlis tersebut.

[89] However, having found that the impugned sum was in fact for the use of the appellant to finance his election expenses, the LTJ found that *prima facie* evidence was established for the following reasons:

> [33] Walau bagaimanapun, tindakan OKT mengarahkan PW13 untuk mengeluarkan dan memindahkan wang tersebut (RM120,000.00) ke dalam akaun peribadi milik OKT hanya beberapa hari selepas kutipan dibuat dan sebelum kempen pilihanraya bermula adalah suatu tindakan yang termasuk di bawah kesalahan seksyen 403 KK, iaitu OKT telah menyalahgunakan harta untuk kegunaan sendiri.
>
> [34] Dilihat dari keseluruhan keterangan dan keadaan sewaktu itu, tiada alasan bagi OKT untuk memindahkan wang tersebut keluar dari akaun Maybank ABBE, kecuali untuk membiayai kempen pilihanraya beliau. Pembiayaan ataupun sebarang bayaran boleh dibuat terus melalui akaun Maybank ABBE ini, tanpa perlu ianya dipindahkan ke dalam akaun peribadi milik OKT.
>
> [35] Tindakan ini, pada hemat Mahkamah ini jelas menunjukkan niat OKT untuk menyalahgunakan wang tersebut untuk kegunaannya sendiri.

[90] We are of the considered view that when the LTJ found that the RM120,000 which were the proceeds from the fundraising was meant to finance the appellant's election campaign, for all intent and purposes, the money belongs to the appellant.

[91] In examining the evidence of PW13, we further find that even PW13 did not say the RM120,000 belongs to ABBE. Instead, he testified that the account belongs to ABBE and the RM120,000 was deposited therein. PW13 did not say the RM120,000 belonged to him. He was not in a position to say as such because it was he who had suggested the ABBE account to be used to hold the money to be used by the appellant. In fact, we find not an iota of evidence that has surfaced showing that the money belongs to ABBE or Armada. There was no attempt by the prosecution to lead evidence that it is ABBE's monies, *albeit* ABBE's account was used to receive the donation as a result of the appellant's appeal to assist him with his election expenses. Premised on the LTJ's finding that the money was for the purpose of the appellant's political campaign, we are of the considered view that PW13 had held the RM120,000 in trust for the appellant and not for the donors. In other words, PW13 was accountable to the appellant as the RM120,000 was on transit in the ABBE's account.

[92] The donors have contributed the money to and for the appellant, and the money was deposited into the ABBE account. We find that the LTJ erred in taking into consideration the facts of the transfer of money into the appellant's personal account and the timing of the transfer. It is logical for expenses to incur in advance before 29 April 2018 as seen in the report filed by the appellant with the Election Commission (see exh. D91) and we find that the LTJ erred in holding that the donation could only be spent during the official campaign period (28 April 2018-9 May 2018). We further find that there was no requirement for the appellant to justify his request for the transfer. According to the appellant the money was his as the money was derived from his plea to the donors to assist him with his political campaign. He is therefore legally entitled to the money. Even if his belief that he is entitled to the money is wrong (which we find he is not), the offence cannot be said to be committed. In *Ratanlal & Dhirajlal's Law of Crimes,* vol. 2, at p. 2264, the learned author had stated:

> A wrong opinion that the accused was justified in keeping the thing does not constitute this offence …

[93] The proposition that the ownership of the property must lie in some person other than the accused is supported by Illustration (a) of s. 403 of the PC which states:

> (a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

[94] We are of the considered view that if only the donations were deposited directly into the appellant's account, the appellant would not have to face this drawback of being charged for dishonest misapproptriaton of money which he is entitled to.

[95] The LTJ had further relied on the evidence of the investigating officer, PW29, in deciding there was a *prima facie* case against the appellant. The LTJ stated:

> [31] PW29 selaku Pegawai Penyiasat juga ketika diajukan persoalan yang sama dengan jelas menyatakan bahawa ketika siasatan dijalankan, apabila OKT telah menyatakan bahawa segala butiran perbelanjaan kempen pilihanraya, beliau boleh dirujuk kepada seorang individu bernama Mohamed Amshar bin Aziz. Namun, menurut PW29, ketika perkara ini dirujuk kepada penama ini, beliau telah menafikan mempunyai sebarang maklumat tentangnya.

[96] We find that the LTJ erred in admitting hearsay evidence because the "individu", Mohamed Amshar bin Aziz (DW2), was not called at the prosecution stage, and what PW29 was saying is something that he heard from a third party who was not called as a witness.

[97] We find that PW13's role was only to provide the use of the ABBE account to receive the donations and later transfer it to the appellant upon the latter's instruction. PW13 was not a witness who could unfold the narrative for the prosecution concerning the RM120,000 collected and deposited in the ABBE account.

[98] In his witness statement D79, PW13 clearly stated that the fundraisers "diuruskan oleh Hidayah dan Amshar" and that he "tidak terlibat dengan Majlis Makan Amal ini." Given that PW13 was not involved with the fundraiser, the person who could meaningfully give evidence on this issue would be Amshar. Mohamed Amshar (DW2) should have been called at the prosecution stage to testify whether he did or did not have knowledge about the campaign's expenses. Mohamed Amshar (DW2) and one other person by the name of Nurul Hidayah binti Kamarudin are material witnesses because these two persons are not only material, they are relevant to assist the court with regard to the status of the RM120,000 being public contribution to the ABBE account. The non-calling of these two witnesses at the prosecution stage had left a gap in the prosecution case and attracted the presumption under s. 114(g) of the Evidence Act 1950.

[99] The prosecution again relied heavily on PW13's evidence and again we find PW13 was inconsistent. We reproduced PW13's evidence in EIC: (refer encl. 12-PDF p. 207 of record of appeal vol. 2(2), encl. 13-PDF p. 9 of the record of appeal vol. 2(3):

TPR (WS): Baik, sebelum tadi pun … awak ada nyatakan "fund raising", siapa buat remark "fundraising" ini?

PW13: Saya yang buat

TPR (WS): Kenapa awak buat remark "fundraising"?

PW13: Sebab duit yang terkumpul dalam akaun ini adalah untuk satu program fundraising yang dianjurkan … untuk YB Syed Saddiq dan selepas daripada itu, saya mendapat arahan untuk transfer amaun yang dikumpulkan itu ke akaun YB Syed Saddiq. Tapi … pada waktu itu, ada account limit yang membolehkan saya buat transaksi dalam satu masa RM30,000.00 sahaja. Sebab itu ada dua transaksi.

[100] Then PW13 retracted his evidence and stated as follows:

TPR (WS): Baik. Akaun peribadi ya? Duit-duit dalam akaun ABBE ni, untuk apa sebenarnya?

PW13: Duit hasil err … duit kegunaa, untuk kegunaan ahli-ahli ARMADA untuk program-program ARMADA juga.

TPR (WS): Sekali lagi, adakah duit dalam akaun ABBE ini..khas digunakan untuk aktiviti Syed Saddiq?

PW13: Err… bukan dia sahaja … err … ahli-ahli ARMADA yang lain juga boleh menggunakannya.

[101] However, upon being confronted with his witness statement (para. 58) (D79) in cross-examination, PW13 sought to explain as follows (refer encl. 16 PDF p. 175 of the record of appeal vol. 2(6):

> PW13: But in directly Syed Saddiq is also in Armada so maksud saya sebab apa Syed Saddiq dibenarkan menggunakan ABBE atas kapasiti dia sebagai ketua Armada which is in title sebab dia juga ahli Armada, Cuma bezanya dekat sini this the luar normal ABBE. ABBE normally kita jual merchandise sebagainya that's why saya bentangkan tapi duit yang digunakan dikumpulkan dalam ABBE Yang Arif adalah daripada hasil sumbangan orang ramai untuk tujuan kempen YB Syed Saddiq di Muar, tapi at first place he's in title because dia sebagai ketua Armada which is dia juga ahli Armada, itu penjelasan saya Yang Arif.

[102] Nonetheless, we agree with the defence's contention that what PW13 sought to explain was that when he said other members could use the money in the ABBE account, he was referring to the ABBE account and not the RM120,000 which was meant for the appellant.

[103] We are mindful of the trite law that the appellate court ought to be slow in disturbing the finding of the credibility of witnesses by the trial judge as we do not have the audio-visual advantage of assessing the demeanour of the witnesses. However, as we have stated earlier, the LTJ did not say that PW13 was credible. The LTJ found his evidence to be consistent. Unfortunately, we cannot agree with the finding of the LTJ because even based on the cold print of the evidence and proceedings before the High Court, we find many inconsistencies in PW13's testimony which render his evidence unsafe to be accepted and relied upon.

[104] The appellant, on the other hand through his ss. 53 and 62 statements under the Malaysian Anti-Corruption Commission Act 2009 stated that he had spent no less than RM170,000 on his election campaign which officially began from 16 April 2018 to 14 March 2018. PW28 confirmed during cross-examination that this had, in fact, been communicated in the two statements. This amount of cash on hand was over and above the amount of monies he had in his Maybank account.

[105] RM90,000 from the impugned RM120,000 was transferred before the beginning of the campaign period, whereas the remaining RM30,000 was transferred on 21 April 2018 during the campaign period. Instead of depositing the RM170,000 that the appellant had on hand, the appellant proceeded to spend RM170,000 on his election campaign, always intending that it be considered monies from the fundraisers. In these circumstances, the impugned sum in his Maybank account was substituted with the RM170,000 cash he had on hand, the latter of which was fully spent by the end of the campaign period for the appellant's campaign in Muar. By 16 and 19 June 2018, therefore, the RM100,000 transferred into his ASB account had already become his personal monies.

A **[106]** The prosecution is duty-bound to negate this defence beyond reasonable doubt. However, when questioned regarding all the above, PW28 made clear that she completely failed to investigate. PW28 conveniently stated that it is not relevant for her to investigate because the RM120,000 did not move from the Maybank account until 16 and 19 June 2018. It is our
B considered view that PW28 is duty-bound to investigate the appellant's defence notwithstanding her failure to appreciate its relevance.

[107] Ultimately, the burden is on the prosecution to prove the appellant did not own the RM120,000. In this regard, there is no evidence upon which we can rely to make this finding.

C **[108]** It is undisputed that the impugned sums were deposited into the ABBE account, not the Armada account. The investigating officer PW28 herself conceded that the ABBE account and the Armada account are separate and distinct entities.

D **[109]** PW11 further corroborated PW28 where at para. 61 of his witness statement he stated:

> Pendapat saya sekiranya wang dari akaun ABBE ini masuk ke dalam akaun peribadi milik YB Syed Saddiq, ianya tidak menjadi urusan ARMADA kerana akaun tersebut bukanlah akaun rasmi milik ARMADA.

E **[110]** PW13 for that matter lent weight to what PW11 said where *vide* para. 158 of D79E (his witness statement) he stated:

> Tujuan majlis makan ini diadakan untuk tujuan fundraising YB Syed Saddiq sendiri iaitu berkempen di Muar.

F **[111]** Further in para. 163 of P79A, PW13 further stated:

> … Saya tidak pernah membentangkan berkenaan wang sumbangan ini di dalam mesyuarat Exco kerana ianya bukan untuk kegunaan politik Armada tetapi untuk kegunaan politik YB Syed Saddiq berkempen di Parlimen Muar namun saya pernah membentangkan laporan kewangan
G ABBE di dalam mesyuarat rasmi exco Armada berkenaan penjualan T-shirt dan cenderahati.

[112] Given the various contradictions in the evidence of PW13 in respect of which the monies were collected at the two fundraisers, the inference most favourable to the appellant must be adopted.

H **[113]** On a maximum evaluation, we find the prosecution has failed to adduce credible evidence and facts to support the s. 403 charge. Credible evidence is evidence that is believable or capable of belief, and such evidence after being subjected to maximum evaluation, the court must feel safe to accept and act upon, and that the evidence proves all the ingredients of the
I offences. In this case, the most important ingredient of the offence under s. 403 of the PC, *ie*, the RM120,000 belongs to another person instead of the

appellant, was not proved and we further find the evidence adduced by the prosecution is unsafe to be relied upon and insufficient to prove the necessary ingredients of the offence.

The AMLA Charge No. 1 And No. 2

[114] Given the predicate offence under s. 403 of the PC is not proven, we further find that the AMLA charges could not be sustained.

Non-appreciation Of The Appellant's Defence

[115] Section 182A (1) of the CPC outlines the procedure for the court at the conclusion of a criminal trial. It mandates that the court must consider all evidence presented and determine if the prosecution has proven the case beyond a reasonable doubt. If the prosecution meets this standard, the court shall find the accused guilty. To consider all the evidence is the key aspect of s. 182A (1) including any statements or evidence from the accused and his witnesses. In the case of *Olier Shekh Awoyal bin Shekh v. PP* [2017] 2 CLJ 141, the Federal Court in discussing the provision of s. 182A(1) of the CPC states that the emphasised must be given to the words "keseluruhan keterangan" or "all evidence".

[116] Section 182A (1) of the CPC is reproduced:

> At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

[117] The word "consider" is defined in *Black's Law Dictionary* as:

> CONSIDER. **To fix the mind on, with a view to careful examination; to examine;** to inspect. *Eastman Kodak Co. v. Richards*, 204 N.Y.S. 246, 248, 123 Misc. 83. To deliberate about and ponder over. *People v. Tru-Port Pub. Co.*, 291 M.Y.S. 449, 457, 160 Misc. 628. To entertain or give heed to ...

[118] Legally it can be understood that evidence may be said to be considered when it has been reviewed by a court to determine whether any probative force should be given to it (see: *Taylor v. Gosset*, Tex. Civ. App., 269 SW 230, 233).

[119] In respect of the abetment charge, the appellant's defence as borne out in his witness statement PDW1 summarily was as follows:

(i) he did not instruct PW13 and PW11 to withdraw RM1 million from Armada's account;

(ii) in early March 2020, the G5 leadership met and discussed about the need to withdraw money from Armada's account for the purpose of COVID-19 pandemic assistance and welfare for the Ramadhan month and Hari Raya Aidilfitri 2020 prior to the Government's imposition of the movement control order;

A (iii) during his five years with the Bersatu Supreme Council the latter was never called upon to approve funds exceeding RM500,000 and as such he had no reason to believe that the approval from the Supreme Council was a prerequisite;

B (iv) he confirmed that there was no requirement to prepare any working papers for amounts exceeding RM500,000 to be approved by the Armada Exco.

[120] In essence it is the appellant's defence that he did not abet PW13 in the commission of criminal breach of trust.

C **[121]** Ulya Aqamah bin Husamudin (DW3) was the appellant's witness. The gist of the DW3's evidence as per his witness statement is as follows:

(i) that PW13 was responsible for discussing with the Armada Exco on the amount of funds necessary for the COVID-19 pandemic, the Ramadhan month and Hari Raya Aidilfitri;

D (ii) that at the meeting at the appellant's house there was no specific discussion on the amount to be withdrawn from Armada's account for the COVID-19 pandemic, the Ramadhan month and Hari Raya Aidilfitri;

E (iii) that there was no separate meeting or discussion between the appellant, PW13 and PW11;

(iv) that the appellant did not mention that he was entitled to the money in the Armada's account as the said amount was derived from his "titik peluh" and it has to be used for his political mileage;

F (v) that when he gave his statement to MACC, he told one officer by the name of Ihsan the discussion in the appellant's house;

(vi) that the appellant did not instruct PW13 to withdraw the RM1 million;

G (vii) it was the collective decision of the G5 that aid was to be given for the purpose of the COVID-19 pandemic, the Ramadhan month, and Hari Raya Aidilfitri;

(viii) that PW13 was to discuss as to the amount to be withdrawn with Armada's Exco; and

H (ix) he did not know as to how PW13 finally chose to divide and distribute the funds.

[122] The followings are the excerpts of the LTJ's findings as to the appellant's defence:

I [43] Dari keseluruhan keterangan ini, Mahkamah ini berpendapat bahawa adalah tidak munasabah bagi seorang pemimpin sayap parti politik tidak mempunyai pengetahuan tentang pengeluaran sejumlah wang besar dari akaun sayap tersebut, lebih-lebih lagi fakta bahawa sejumlah wang yang besar telah dikeluarkan.

A

> [44] Selain dari itu, penafian OKT berkenaan beliau mempunyai pengetahuan tentang penyimpanan dan kegunaan wang tersebut juga adalah sesuatu yang sukar diterima akal.

[123] We are of the considered view that in disbelieving the appellant for being unaware of the amount withdrawn reflects that the LTJ had failed to appreciate and consider the core features of the appellant's defence. We find the appellant's defence cannot be said to be a mere denial. We further find that the evidence adduced by the prosecution was challenged and explained in every aspect by the appellant.

B

[124] In addition, we also find that there was no consideration at all in regards to DW3's evidence by the LTJ which supports the appellant's defence.

C

[125] It is also apparent that DW3's evidence contradicts the evidence of PW11 and PW13 that the appellant had a private discussion with them and that the appellant had instructed PW13 to withdraw RM1 million from Armada's account for the purpose of COVID-19, the Ramadhan month and Hari Raya Aidil Fitri. Instead of considering this crucial aspect of evidence, all the LTJ did was just to narrate DW3's evidence which can be seen in the following paragraphs:

D

> [41] DW3 yang turut hadir dalam perjumpaan di rumah OKT beberapa hari sebelum pengeluaran wang RM1000,000.00 dibuat, turut menafikan yang OKT ada mengarahkan PW13 untuk membuat pengeluaran tersebut ketika perbicangan mereka berlima di rumah OKT.

E

> [42] Menurut beliau lagi bantuan untuk Covid-19, bantuan hari raya, Ramadhan hanya boleh dibaut bersama oleh kepimpinan G5 dan jumlah pengeluaran adalah berdasarkan kepada keperluan sebenar setelah PW14 berbincang dengan Exco Armada yang bertanggungjawab.

F

[126] There was no consideration or evaluation done as to whether DW3 is capable of belief and if he was not, the reasons must be given because DW3 was an important defence witness who had corroborated the appellant's defence. Pertinently, there ought to be consideration and findings made as to the contradictions between DW3's, PW13's and PW11's evidence.

G

[127] It is trite that when defence raised by an accused is not bare denial, it is incumbent on the trial judge to consider and scrutinise the defence's version and even if the defence's version cannot be believed, the trial judge must give reasons as to why the version did not cast reasonable doubt on the prosecution's case (see *Hairie Mahthinem v. PP* [2011] 8 CLJ 625). This is why s. 182A(1) of the CPC imposes the duty on the trial judge to consider all the evidence adduced and to decide whether the prosecution has proved beyond a reasonable doubt.

H

I

[128] In the case of *Prasit Punyang v. PP* [2014] 7 CLJ 392 the Court of Appeal had stated:

A

> [8] … In accordance with the provisions of s. 182A(1) of the Criminal Procedure Code, it is the bounden duty of the learned JC, at the conclusion of the trial, to consider all the evidence adduced before him and shall decide whether the prosecution has proved its case beyond reasonable doubt. The legislature has advisedly used the term all the evidence. The emphasis must be on the word all … The aim of this provision is obviously to make certain that an accused person gets a fair trial.

B

[129] Clearly, the LTJ, was bound to, but did not view the whole of the evidence objectively and from all angles, with the result that the appellant had lost the chance which was fairly open to him of being acquitted. On this point, we consider that the non-direction of the LTJ amounts to a misdirection.

C

[130] It is true that an appeal is a rehearing of the case and that the appellate court can consider the evidence and evaluate the merits of the case. Learned Deputy Public Prosecutor referred to the case of *PP v. Ramesh Rajaratnam* [2025] 1 CLJ 55; [2024] MLJU 2054 where the court held that the High Court, in exercising its appellate jurisdiction cannot decide an appeal solely on an *inter alia* non-speaking judgment without considering the merits of the case and whether the error committed by the LTJ is material.

D

E

[131] We have reviewed the evidence and the LTJ's judgment. We find the LTJ's failure to consider all the evidence adduced by the appelant and his witness was indeed material to the verdict of the case and had occasioned a serious lapse in the decision-making process, in breach of s. 182A(1) of the CPC which warrants appellate intervention. The LTJ must explain how His Lordship considers all the evidence in relation to the defence and the failure of which breach the common law rule that the defence of an accused must be judicially appreciated. The adjudication process in our adversarial system of administration of justice demands that every defence available to the accused person based on the evidence and facts before the court be considered by the court. Only when the accused person fails to proffer evidence or rebut the prosecution's case leaves the court with no choice but to convict him.

F

G

[132] It is further found that the LTJ had failed to consider the substantial part of the appellant's statement (P98), which was tendered during the prosecution stage and was used by the prosecution to cross-examine DW3. DW3 had stated that there was no mention of the amount to be withdrawn for the purpose of the COVID-19 and Hari Raya and that PW13 was tasked to manage it during the meeting at the appellant's house. DW3 stated:

H

> … Saya sahkan pada sekitar penghujung Februari 2020, Pegawai Tertinggi ARMADA 'G5' ada membut perbincangan bersama, saya sudah tidak ingat di mana perbincangan tersebut dibuat, semasa perbicangan itu, kamu 'G5' iaitu YB Syed Saddiq, Aizad, Redzuan, Rafiq Hakim dan saya ada

I

berbincang mengenai keperluan mengeluarkan sejumlah wang untuk persiapan menghadapi wabak COVID 19 dan persiapan Hari Raya Aidilfitri 2020. Saya sahkan, semasa perbincangan tersebut, jumlah sebenar wang yang ingin dikeluarkan tidak dimaklumkan secara khusus dan anggaran juga tidak dinyatakan. Saya sahkan, G5 telah bersetuju dan menyerahkan tanggungjawab sepenuhnya kepada Rafiq Hakim untuk membuat anggaran perbelanjaan mengikut keperluan dan memberi sepenuh kepercayaan kepada Rafiq Hakim selaku Bendahari ARMADA untuk menguruskannya.

[133] We find that this part of the evidence spoke in favour of the appellant in that there was a discussion within the G5 to withdraw money for the COVID-19 pandemic and for Hari Raya Aidilfitri where no amount was discussed, and that PW13 was tasked to manage and determine the amount of expenses. Given that P98 was tendered by the prosecution and that this piece of evidence support the appellant's defence, the LTJ therefore erred in failing to consider the evidence.

[134] Another important aspect of the appellant's defence relates to the probability of PW13's motivation to give evidence against the appellant. It was the defence's contention that from PW13's evidence it can be strongly inferred that PW13 has tailored his evidence to appease the MACC. The relevant parts of PW13's evidence were highlighted as follows:

[a] While being examined by the prosecution, PW13 had admitted that he had been remanded by the MACC for a period of 6 days and during the remand period, he was sad and under a lot of stress;

[b] He suffered a break down after being informed that his initial remand period may be extended for one more day; and

[c] While he was in remand, he had even called his wife (PW12) to inform her that "bagi tahu pada sahabat-sahabat di luar, tak payah buat-buat PC ni apa, sebab kat dalam, saya yang kena teruk, bukan mereka kat luar.

[135] PW13 then admitted during cross-examination that after being made aware that art. 24.8 of the Bersatu Constitution used the word 'perbelanjaan' instead of 'pengeluaran', he had changed his evidence to focus on no working papers being prepared for the withdrawal of the said RM1 million. The court's attention was taken to that part of PW13's evidence:

PB (GDW): Now you know… that PWRm got it wrong. Right? Because 24.8 does not say "pengeluaran" it says "perbelanjaan". Untuk a one-off payment of RM500,000.00 which wasn't the case here, correct?

PW13: Yes

PB (GDW): Yeah. That's why your whole evidence has changed now and you are focusing just on kertas kerja, right?

PW13: Yes.

A **[136]** The defence further highlighted that another defence witness, DW4, had testified that she had been threatened and roughed up by MACC officers who had interrogated her in respect of the appellant's case. She had then lodged a police report (D95) and called a press conference pertaining to the incident. In D95, DW4 revealed that:

B (i) on 4 June 2020, the MACC officers had taken her mobile phone, squealed at her and threw her mobile phone towards her;

(ii) while in the investigation room, 6 MACC officers had hissed at her and abused her with the words "babi" and "bodoh". These officers were said to have asserted that she deserved to live alone and to be cast aside by her family when they were dissatisfied with her answers; and

C

(iii) one of the MACC officers had even threatened to slap her face, and subsequently she was also asked to stand for about 30 minutes with one of her legs and both of her hands up.

D **[137]** The appellant had written to the MACC Chief Commissioner complaining *inter alia* of the incident that happened to DW4 (P96).

[138] DW4 is the wife of PW10, Abdul Hannan bin Khairy who also admitted that he was pressured while being investigated. The relevant part of PW10's evidence is reproduced:

E

PB (GDW): Adakah kamu juga rasa tertekan?

PW10: Ya

PB (GDW): Ya. Dan ini semua adalah kerana PWRM hendak jawapan-jawapan tertentu dari kamu dan isteri kamu?

F

PW10: Ya.

[139] We have examined the evidence of PW13 and as alluded to earlier, his evidence is inconsistent in many aspects during EIC, cross-examination and re-examination. We find there is merit in the defence's contention that

G the evidence of these witnesses being pressured gives rise to a strong reasonable inference that the MACC might have also exerted improper pressure upon PW13 to tailor his evidence to suit the prosecution's case. We agree with the defence's contention that it cannot be dismissed PW13 had succumbed to the pressure of being investigated and interrogated to the extent

H that he admitted he had committed criminal breach of trust when questioned by the prosecution and gave evidence against the appellant.

[140] We are of the considered view that when there is evidence that witnesses were pressured and submissions made to infer evidence being tailored to suit the prosecution's case, coupled with inconsistencies in the

I witness's testimony such as PW13 herein, not only there is merit in the submission, but the evidence is also both material and relevant to be

considered. Yet again, nowhere in the LTJ's grounds of judgment does it disclose that His Lordship had evaluated and considered this critical evidence. The omission to consider all the evidence has resulted in failure of justice to the appellant and we find there is a serious misdirection on the part of the LTJ.

[141] In regard to the s. 403 charge, it was the appellant's defence that since the RM120,000 was for his political campaign, the money belonged to him and was not the property of Armada, Bersatu, ABBE, and/or PW13. As such there was no dishonest misappropriation or conversion on his part.

[142] PW13 testified and confirmed that it was him who had suggested to DW2 that the appellant could use the ABBE account. As such, that does not make PW13 the owner of the RM120,000. According to the appellant he had initiated programs to promote himself for the 14th General Election. The appellant had used his own funds for this purpose and had also formed a team known as "Team Saddiq" comprising himself, DW4, DW2, and a few others who were not members of Bersatu. It was the appellant's evidence that for both the fundraising events, he had used his own funds for organising and preparing the locations of the dinners *etc*. He received no financial assistance from Armada and/or Bersatu.

[143] It was the appellant's evidence further that for the two fundraising dinners, he wanted to use his personal account, but his team suggested that it would be better if a business account were used, which eventually resulted in the appellant agreeing to use the ABBE's account.

[144] It was also established that PW13 was not involved in organising the two fundraising dinners.

[145] It was the appellant's defence that he treated the proceeds from the two fundraising dinners of RM120,000 as a reimbursement of the monies he spent on his own personal political campaign as the money did not belong to Bersatu, Armada, PW13, and or ABBE. In other words the RM120,000 was temporarily parked in the ABBE account and when he requested for the impugned money be transferred to his Maybank account, he did not commit the offence.

[146] To corroborate and strengthen his defence, the appellant called DW2 and DW4 who confirmed that the fundraising events were meant for the appellant and the same did not involve any members of Bersatu or Armada. DW2 and DW4 stated that the ABBE's account was used for the fundraising events at the suggestion of PW13, and DW2's allowance for his assistance in the appellant's Ampang's fundraising dinner and political campaign were initially paid by the appellant.

[147] The LTJ found as follows:

> [45] Bagi pertuduhan kedua, ketiga dan keempat, OKT menegaskan bahawa wang kutipan hasil majlis makan malam yang diadakan adalah untuk menggantikan perbelanjaan yang telah dikeluarkan dari wang beliau sendiri yang telah digunakan olehnya bagi menampung kos kempen pilihanraya beliau sendiri.
>
> [46] Untuk menyokong dakwaan ini, OKT telah mengemukakan D85, D86, D87, D88 dan D89 iaitu poster majlis makan malam, hantaran di Facebook dan ciapan di Twitter.
>
> [47] DW2 dan DW4 juga dalam keterangan mereka menyatakan bahawa segala program meraih dana tersebut adalah bagi tujuan kempen OKT sebagai calon dalam PRU14.
>
> [48] Setelah memberikan pertimbangan terhadap pembelaan yang dikemukakan ini dan keseluruhan keterangan Pihak Pendakwaan, Mahkamah ini mendapati bahawa tiada satu pun keterangan yang dikemukakan oleh OKT menunjukkan bahawa kutipan majlis makan malam yang akan diadakan adalah untuk menggantikan perbelanjaan yang telah dibuat oleh OKT sebelum ini, sebaliknya adalah untuk menampung kempen pilihanraya OKT.
>
> [49] Selain dari itu, jika dilihat dari kronologi dan tarikh-tarikh yang berkaitan menunjukkan bahawa pemindahan wang dari akaun ABBE kepada akaun peribadi Maybank OKT berlaku sebelum pilihanraya berlangsung. Manakala, pemindahan wang ke akaun ASB OKT pula berlaku sebulan selepas pilihanraya berlangsung.
>
> [50] Penyata-penyata bank yang dikemukakan iaitu P77, P73, P72 (a-d), P71 (a-d), P48, P37, P36 tidak menunjukkan sebarang pengeluaran yang boleh dikatakan sebagai perbelanjaan bagi kempen pilihanraya.
>
> [51] Justeru itu, dakwaan bahawa OKT telah membelanjakan wang beliau sendiri juga tidak disokong oleh mana-mana keterangan. Tanpa sebarang bukti untuk menyokong fakta ini, dakwaan yang wang terlibat adalah untuk menggantikan wang OKT sendiri juga adalah tidak berasas. (Seksyen 101,102 dan 103 Akta Keterangan).

[148] Firstly, it must be noted that the LTJ did not consider the evidence of DW2 and DW4 but merely narrated their evidence. At the risk of repetition, DW2 stated that for the 14th General Election, the appellant and Team Saddiq had proposed the two fundraising dinners to be held in Muar and Ampang. The fundraising dinners were meant for the appellant personally and members of Bersatu or Armada were not involved. Team Saddiq discussed the bank account to be used for the two fundraising dinners, and DW2 reached out to PW13 and the latter proposed that the ABBE account be used. DW2 confirmed that the RM120,000 belonged to the appellant and that DW2's allowance for his assistance in the fundraising dinner in Ampang was initially paid for by the appellant.

[149] DW4 stated that for the previous ten programs initiated to promote the appellant as a candidate for Muar's Parliamentary seat, the appellant had used his own personal money. According to DW4, Team Saddiq proposed to organise the fundraising dinners and the process of registering Saddiq Resources with the Companies Commission of Malaysia was postponed after PW13 allowed the appellant to use his ABBE account for the purpose of fundraising. DW4 further stated that she had informed the contributors who had contacted her in relation to their donation banked into the ABBE account that the Muar's fundraising dinner was meant for the appellant's personal political campaign. Neither Armada nor Bersatu rendered any assistance for the Muar's fundraising dinner, and the proceeds were solely for the benefit of the appellant. According to DW4, the appellant had given her cash amounting to RM30,000 to organise the fundraising dinner in Muar. During the campaign period for the 14th General Election, the appellant had also given her cash to pay for all the expenses incurred for his personal political campaign. DW4 had prepared D91, the official submission to the Election Commission confirming that the appellant had spent RM171,675 in his campaign.

[150] Premised on the evidence above it is therefore perplexing when the LTJ found:

> [51] Justeru itu, dakwaan bahawa OKT telah membelanjakan wang beliau sendiri juga tidak disokong oleh mana-mana keterangan. Tanpa sebarang bukti untuk menyokong fakta ini, dakwaan yang wang terlibat adalah untuk menggantikan wang OKT sendiri juga adalah tidak berasas. (Seksyen 101, 102 dan 103 Akta Keterangan).

[151] It is pertinent to note that the LTJ did not say that DW2 or DW4 are not credible witnesses. Their evidence supported the appellant's defence but their evidence was not considered but merely narrated.

[152] Secondly, we are of the considered view that at para. [48] of the judgment, when the LTJ stated that no evidence was adduced by the appellant showing that the funds collected from the fundraising dinners were to substitute the expenses spent by him, but instead were for his political campaign, we agree with the defence's contention that the LTJ failed to appreciate that the funds collected from the fundraising dinners ("kutipan majlis makan malam adalah untuk menggantikan perbelanjaan") and to accommodate the appellant's political campaign ("menampung pilihanraya OKT") are closely connected and disclose the absence of dishonesty on the part of the appellant of misappropriation or conversion.

[153] Further, the LTJ failed to consider that PW13 in actual fact corroborated the appellant's defence. The LTJ failed to consider that PW13's evidence in cross-examination where the latter agreed for the ABBE account to be used and that the money was meant for the appellant's political

A campaign. In cross-examination, PW13 agreed that during the investigation he told the MACC officers that the fundraising dinners were for the appellant's personal campaign.

[154] We find that the LTJ not only omitted to consider and appreciate the crucial evidence stated above, His Lordship had also erred in his findings, B as reflected in paras. [48] to [51] of the judgment. The real question was whether the money belonged to the appellant and the LTJ failed to ask himself this question. We find that from the evidence adduced, the RM120,000 belonged to no other persons but the appellant and as such no offence under s. 403 of the PC was committed by the appellant.

C **[155]** In regards to the AMLA charges, no findings were made by the LTJ relating to the appellant's defence that the proceeds in both these charges were not proceeds of unlawful activity. There was no consideration as to the appellant's defence that he had no reason to believe or suspect that the RM100,000 transferred into his ASB account were proceeds of an unlawful D activity or the instrumentalities of a scheduled offence as the monies belong to him.

[156] To borrow the words of Gopal Sri Ram JCA in *Mohd Johi Said & Anor v. PP* [2005] 1 CLJ 389; [2005] 5 MLJ 409, this is the case where the E appellant had proffered a strong defence supported by credible evidence presented to the court. Therefore, it was the bounden duty of the LTJ to consider that defence. There was simply no judicial appreciation of the defence case. This is accordingly a case of non-direction by the LTJ unto himself. It is not sufficient for the LTJ to say that he had considered or he had evaluated the evidence when the said consideration or evaluation could F not be found in the judgment.

[157] In *Maria Elvira Pinto Exposto v. PP* [2020] 5 CLJ 1; [2020] 3 MLJ 21 the Federal Court through the judgment of the learned Chief Justice stated:

> [64] In the instant case the learned judge merely re-evaluated the fact G deemed by operation of law, namely the element of knowledge. What His Lordship did was consonant with Balachandran and s. 182A of the CPC which provides that at the conclusion of the trial, the Court shall consider all the evidence adduced before it. Under the law, the learned trial judge was thus obligated to consider the defence and to determine whether it has succeeded in rebutting the statutory presumption invoked and/or has H succeeded in raising a reasonable doubt on the prosecution's case.

[158] We further observed that the LTJ had not made a single reference or consideration to the submissions made by the appellant's counsel although His Lordship had afforded the appellant the opportunity to make a submission. When an accused is directed to submit orally or to file written I submissions, the court must not disregard or fail to consider that submission. It is unfortunate that nowhere in the judgment did the LTJ directed his

attention to the submission made on behalf of the appellant on the core features of the defence and issues. It is our considered view that failure to consider the submissions made by the counsel representing the appellant is an appealable error, a misdirection by way of non-direction which had occasioned a grave miscarriage of justice.

[159] In *Lim Poh Soon v. PP* [2013] 6 MLJ 252, the Court of Appeal had held:

> [13] … Ultimately, for the purpose of s. 180(1) and (4) of the CPC, the learned judge was under a legal obligation to arrive at, and make the necessary finding on this factual issue on the basis of the evidence tendered and the submissions made by the parties before him. It follows from this that once the evidence had been place and submissions made, there was a statutory duty cast on the learned judge to make a specific finding of facts on the material discrepancy issue raised by the appellant. These are deep-seated expectations not only from the appellant but also from the prosecution before the learned judge. This is acutely important in a case that attracts the mandatory death penalty prescribed by the DDA as in the present case. For that reason, the duty of the learned judge as a trial judge is to ensure that this legal obligation is complied with so as to avoid 'failure of justice' situations. However, as we indicated earlier, the learned judge never addressed or commented on this issue in his judgment. This was never considered by the learned judge and he failed to direct his mind on this point. *In our judgment, the failure on the part of the learned judge to take the evidence regarding the material discrepancy into consideration amounted in effect to a failure to consider a defence which had been put forward (see Er Ah Kiat v. Public Prosecutor [1965] 2 MLJ 238). It was the duty of the learned trial judge to consider that defence, no matter how weak it may be (see Davendar Singh a/l Sher Singh v. Pendakwa Raya [2012] MLJU 321; [2012] 3 AMR 489)*. In our view, this is a serious non-direction which amounts to a misdirection by the learned trial judge warranting appellate intervention (see *Gooi Loo Seng v. Public Prosecutor* [1993] 2 MLJ 137; [1993] 2 AMR 1135). (emphasis added)

Conclusion

[160] Premised on the above, we unanimously find that the convictions entered by the High Court on all the charges preferred against the appellant are unsafe.

[161] The appellant's appeals are therefore allowed. The convictions and sentences are set aside. The appellant is hereby acquitted and discharged of the charges.